MISSISSIPPI CODE 1972
Annotated

Public Officers and Employees; Public Records

Title 25

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME SEVEN

PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

§§ 25-1-1 to 25-65-33

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2018 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2018 Replacement Volume 7 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 1999 Replacement Volume 7, the 2003 Replacement Volume 7, the 2006 Replacement Volume 7, and the 2010 Replacement Volume 7, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2018 Regular Legislative Session.

This volume contains the full text of Title 25 of the Mississippi Code of 1972 Annotated, as amended through the 2018 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22902-5389.

September 2018 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
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— Editor's Notes
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— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

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§ 25-1-1. Length of terms.

The term of office of all officers, not otherwise provided for by law, shall be four (4) years and until their successors shall be duly qualified.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 11; 1857, ch. 6, art § 183; 1871, § 307; 1880, § 396; 1892, § 3049; 1906, § 3456; Hemingway's 1917, § 2794; 1930, § 2881; 1942, § 4026.

Cross References —

Time of general elections, see Miss. Const. Art. 4, § 102.

Term of office of elected officials, see Miss. Const. Art. 12, § 252.

Election of judges and chancellors, see §§ 23-15-991, 23-15-1015.

JUDICIAL DECISIONS

ANALYSIS

1. Public officers in general.
2. Validity of statutes.
3. Holding over.
4. Particular officers, application to.

1. Public officers in general.

Position is "public office" when created by law with duties cast upon incumbent involving exercise of some portion of sovereign power in performance of which public is concerned and which are continuing in their nature, "continuing" meaning enduring and permanent, whereas "public employment" is position lacking one or more of foregoing elements. State by Mitchell v. McLaurin, 159 Miss. 188, 131 So. 89, 1930 Miss. LEXIS 359 (Miss. 1930).

Length of time required to perform special and transient duties is not test of whether person discharging duties is public officer or employee. State by Mitchell v. McLaurin, 159 Miss. 188, 131 So. 89, 1930 Miss. LEXIS 359 (Miss. 1930).

2. Validity of statutes.

Laws, 1914, ch. 275 is not unconstitutional as failing to fix the terms of office of the seawall district commissioners. Board of Mayor & Aldermen v. Moreau, 109 Miss. 407, 69 So. 214, 1915 Miss. LEXIS 171 (Miss. 1915).

3. Holding over.

Under this section, [§ 4026], and § 136 of the Constitution of 1890, a member of the board of county supervisors, who was reelected during 1940 for such office but failed to provide bond and take the oath of office, had a right to hold over during the year 1940 until his successor should be elected and make the required bond and take the oath of office. O'Neal v. Fairley, 190 Miss. 650, 200 So. 722, 1941 Miss. LEXIS 70 (Miss. 1941).

Equity court lacked jurisdiction to try by injunction right to office of county supervisor of either held-over officer or of newly elected officer who had a certificate of election, regular on its face, and commission therefor, and who had duly qualified. Yates v. Summers, 177 Miss. 252, 170 So. 827, 1936 Miss. LEXIS 259 (Miss. 1936).

Newly elected member of board of supervisors did not waive claim to office, as against incumbent holding over on ground that newly elected member was ineligible, by accepting appointment from Governor after injunctive writ had been served. Yates v. Summers, 177 Miss. 252, 170 So. 827, 1936 Miss. LEXIS 259 (Miss. 1936).

Fact that office incumbent holds over under statutory authority until successor has qualified held did not preclude "vacancy" as basis for selecting successor. Berry v. Berry, 165 Miss. 472, 144 So. 695, 1932 Miss. LEXIS 292 (Miss. 1932).

Where duly elected justice of peace failed to qualify, incumbent was authorized to hold over until election and qualification of successor. Berry v. Berry, 165 Miss. 472, 144 So. 695, 1932 Miss. LEXIS 292 (Miss. 1932).

4. Particular officers, application to.

Under Laws 1914 ch. 163, term of office of factory inspector is four years. State ex rel. Attorney Gen. v. McDowell, 111 Miss. 596, 71 So. 867, 1916 Miss. LEXIS 344 (Miss. 1916).

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 154 et seq.

CJS.

67 C.J.S., Officers §§ 136–142, 209.

§ 25-1-3. Date terms begin for state officers, except the governor.

The term of office of all state officers elected at a general election for that purpose, except the Governor, shall commence on the Thursday next after it shall be ascertained and determined by the House of Representatives who shall have been elected to the respective offices, as provided in Sections 140 and 143 of the Constitution.

HISTORY:

Codes, 1880, § 398; 1892, § 3050; 1906, § 3457; Hemingway's 1917, § 2795; 1930, § 2882; 1942, § 4027; Laws, 1973, ch. 352, § 1; Laws, 1982, ch. 387, eff from and after November 2, 1982 (date of approval by the state electorate of amendment to section 140, Mississippi Constitution of 1890, as proposed by Senate Concurrent Resolution No. 517 [ch. 621, Laws, 1982]).

Cross References —

Commencement of term of chancellors, see § 9-5-1.

Commencement of term of circuit court judges and chancery court judges, see § 23-15-1011.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees § 159.

CJS.

67 C.J.S., Officers §§ 143, 145.

§ 25-1-5. Date terms begin for district, county, and beat officers.

The term of office of all officers elected at such election for any district office, in a district composed of more than one county, or any county office, or any office of a subdivision of a county shall commence on the first Monday of January next succeeding the election.

HISTORY:

Codes, 1880, § 396; 1892, § 3051; 1906, § 3458; Hemingway's 1917, § 2796; 1930, § 2883; 1942, § 4028.

Cross References —

Appointive officers of code charter municipality, see § 21-3-5.

JUDICIAL DECISIONS

1. In general.

The right of a former sheriff and tax collector to file a claim against the county for compensation for alleged services accrued at the time his term of office expired. Smith v. Copiah County, 232 Miss. 838, 100 So. 2d 614, 1958 Miss. LEXIS 337 (Miss. 1958).

The dismissal by a former sheriff and tax collector of his action against the county for compensation for alleged services did not destroy the right of his assignee, who was to obtain a portion of any recovery, and since the assignee's right was dependent upon the right of his assignor, assignee's action should have been brought within six years from the date of the expiration of the term of office of the former sheriff and tax collector, and, where it was not, the claim was barred. Smith v. Copiah County, 232 Miss. 838, 100 So. 2d 614, 1958 Miss. LEXIS 337 (Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

While the legislature expressly requires that the first Monday in January is the date in which a term of office is to start, and no earlier, an oath of office may be made before the first Monday in January. 1991 Miss. Op. Att'y Gen. 814.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees § 159.

CJS.

67 C.J.S., Officers §§ 143, 145.

§ 25-1-7. Vacancy in office.

If any person elected or appointed to any state, state district, levee board, county, county district, or municipal office shall fail to qualify as required by law on or before the day of the commencement of his term of office, or for any cause any such officer shall hold over after his regular term of office expires under the authority given him to hold over until his successor is appointed or elected and qualified, a vacancy in such office shall occur thereby and it shall be filled in the manner prescribed by law, as provided by Section 103 of the Constitution for filling vacancies in such offices, unless the failure to qualify arises from there being no officer to approve the bond of such officer-elect, and except the Governor-elect when the Legislature fixes by resolution the time of his installation. This section shall not be applicable to any coroner who fails to qualify as provided in Section 19-21-105.

HISTORY:

Codes, 1857, ch. 6, art. 196; 1871, § 319; 1880, § 400; 1892, § 3052; 1906, § 3459; Hemingway's 1917, § 2797; 1930, § 2884; 1942, § 4029; Laws, 1924, ch. 230; Laws, 1986, ch. 459, § 29, eff from and after July 1, 1986.

Cross References —

Delivery of books and records of office to a successor clerk of court, see § 9-1-31.

Quo warranto to test right to hold public office, see § 11-39-5.

Who are elected officers of municipality operating under code charter, see § 21-3-3.

Qualifications for office of mayor or councilman, see § 21-5-5.

Vacancy by reason of removal or default, see § 25-1-59.

Removal of public officers, see § 25-5-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Failure to qualify.
3. Filling vacancies.

1. In general.

Authority of governor as to approval of bonds of state official is stated. Broom v. Henry, 136 Miss. 132, 100 So. 602, 1924 Miss. LEXIS 110 (Miss. 1924).

In view of the return of the election commissioners that he had been elected to the office of mayor, though wrongful, it was unnecessary for a relator to have taken oath and executed bond, or have offered to do so, on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. State ex rel. Bourgeois v. Laizer, 77 Miss. 146, 25 So. 153, 1899 Miss. LEXIS 44 (Miss. 1899).

2. Failure to qualify.

Where duly elected justice of peace failed to qualify, incumbent was authorized to hold over until election and qualification of successor. Berry v. Berry, 165 Miss. 472, 144 So. 695, 1932 Miss. LEXIS 292 (Miss. 1932).

Failure of commissioner of levee board, on reappointment, to file bond under belief old bond would suffice to disqualify him. State ex rel. Jones v. Lyon, 145 Miss. 163, 110 So. 243, 1926 Miss. LEXIS 6 (Miss. 1926).

Commission of levee district is not authorized to continue in office because of failure of appointee to qualify, when prevented from filing bond for approval. State ex rel. Hairston v. Baggett, 145 Miss. 142, 110 So. 240, 1926 Miss. LEXIS 5 (Miss. 1926).

Marshal failing to qualify for office of tax collector was not entitled to recover fees of one illegally elected to office. Coker v. Wilkinson, 142 Miss. 1, 106 So. 886, 1926 Miss. LEXIS 52 (Miss. 1926).

The execution and approval by the designated officers of the bond required by law of a county officer is a condition precedent to the right to enter upon the office; tender to the proper officers of a bond, although ample and solvent, is not a compliance with such a condition if the bond be rejected. Andrews v. State, 69 Miss. 740, 13 So. 853, 1892 Miss. LEXIS 50 (Miss. 1892).

3. Filling vacancies.

Fact that office incumbent holds over under statutory authority until successor has qualified does not preclude "vacancy" as basis for selecting successor. Berry v. Berry, 165 Miss. 472, 144 So. 695, 1932 Miss. LEXIS 292 (Miss. 1932).

Laws, 1908, ch. 190, providing manner in which vacancies in offices shall be filled did not repeal Code 1906, § 3435. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770, 1918 Miss. LEXIS 223 (Miss. 1918).

The mode of filling vacancies in the office of justice of the peace is, by Const. 1890, § 103, committed entirely to the legislature. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770, 1918 Miss. LEXIS 223 (Miss. 1918).

When to fill a vacancy an election is held which is irregular, but commission is issued to the successful candidate, who qualifies and enters upon the duties of the office, and litigation afterward arises involving the validity of the election, whereupon, anticipating an adverse decision, he is appointed by the governor as if there had been no election, the fact that this is done pending the controversy does not affect the validity of his appointment. State v. Lovell, 70 Miss. 309, 12 So. 341, 1892 Miss. LEXIS 122 (Miss. 1892).

OPINIONS OF THE ATTORNEY GENERAL

Fire district commission members are authorized to holdover until their successor has been lawfully appointed and has qualified to assume the office. 1991 Miss. Op. Att'y Gen. 712.

Appointed municipal election commissioners are entitled to serve and perform statutory duties of commissioners until their successors are appointed and qualified. 1993 Miss. Op. Att'y Gen. 752.

Based on Section 25-1-7, individuals who are serving in the positions of city attorney, municipal judge, municipal prosecutor, public defender and dilapidated housing prosecutor from a previous term and, who were not confirmed by the city council prior to serving that term, are holdover employees until either they or their successors are appointed by the mayor and confirmed by the city council. 1996 Miss. Op. Att'y Gen. 88.

There is no authority for three members of the Mississippi State Board of Medical Licensure whose terms expire on June 30, 2000 to continue to serve after that date if they have not been reappointed at that time by the Governor, and no other individuals have been appointed to fill their seats. 2000 Miss. Op. Att'y Gen. 295.

If a town forgoes holding a general election in the event no person qualifies to run in that election, the incumbent officials would hold over after the expiration of their regular terms of office until such time as new officers are elected; further, any action taken by those officers during this hold-over period would be valid and binding as official acts. 2001 Miss. Op. Att'y Gen. 254.

When a city council tables an appointment recommended by the mayor for a position held by a person whose term has expired, the official whose term has expired continues to serve as a holdover. 2001 Miss. Op. Att'y Gen. 647.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 133 et seq.

CJS.
67 C.J.S., Officers §§ 161–186.

§ 25-1-9. Oath of office taken.

The oath of office may be taken by all officers before any person authorized by law to administer an oath.

HISTORY:
Codes, Hutchinson's 1848, ch. 33, art 27 (2); 1857, ch. 6, arts 184, 185; 1871, § 308; 1880, § 401; 1892, § 3053; 1906, § 3460; Hemingway's 1917, § 2798; 1930, § 2885; 1942, § 4030.

Cross References —
Form of oath of office, see Miss. Const. Art. 14, § 268.

"Affirmation" as included in word "oath", see § 1-3-35.

Persons authorized to administer oaths, see § 11-1-1.

Oath requirement for subordinate appointed by head of state department, see § 25-3-47.

Authority of notaries public to administer oath, see § 25-33-9.

OPINIONS OF THE ATTORNEY GENERAL

A newly appointed district attorney must take and file an oath of office in accordance with §§ 25-1-9 and 25-1-11 before he or she is entitled to any compensation. 2002 Miss. Op. Att'y Gen. 62.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 131, 132.

CJS.
67 C.J.S., Officers §§ 66–74.

§ 25-1-11. Oath of office filed.

The oath of office of all state officers, and of all officers elected or appointed for any district composed of more than one county, shall be filed in the office of the secretary of state; but the oath of office of the circuit judges, chancellors, and district attorneys may be filed in the office of the clerk of the court where such officer shall first attend to discharge the duties of his office. The oath of office of all officers whose duties are confined within the limits of the county in which they are elected shall be filed in the office of the clerk of the chancery court of the county.

HISTORY:

Codes, 1857, ch. 6, arts 184, 185; 1871, § 308; 1880, § 402; 1892, § 3054; 1906, § 3461; Hemingway's 1917, § 2799; 1930, § 2886; 1942, § 4031.

Cross References —

Assuming duties of office before taking oath, see § 97-11-41.

OPINIONS OF THE ATTORNEY GENERAL

A newly appointed district attorney must take and file an oath of office in accordance with §§ 25-1-9 and 25-1-11 before he or she is entitled to any compensation. 2002 Miss. Op. Att'y Gen. 62.

§ 25-1-13. State officials to make guaranty or surety bonds.

The state officials hereinafter named shall give bond in the penalty specified for each, with surety by one or more guaranty or surety companies authorized to do business in the state. Said bonds shall be approved by the Governor and commissioner of insurance and, when so approved, shall be filed and recorded in the office of the secretary of state.

The bond of the auditor of public accounts shall be for Thirty Thousand Dollars ($30,000.00); the state treasurer, One Hundred Thousand Dollars ($100,000.00); the land commissioner, Fifteen Thousand Dollars ($15,000.00); each of the public service commissioners, Ten Thousand Dollars ($10,000.00); director of the feed and fertilizer division, department of agriculture and commerce, Ten Thousand Dollars ($10,000.00); assistant secretary of state, Five Thousand Dollars ($5,000.00); state forester, Five Thousand Dollars ($5,000.00); sergeant of the guard of penitentiary, One Thousand Dollars ($1,000.00); dispatch sergeant of the state penitentiary, One Thousand Dollars ($1,000.00).

The official bonds of all other state officers shall continue and remain as to amounts thereof as now fixed elsewhere by law, but said bonds shall be subject to the provisions stated herein for sureties, approval, filing, and premium payment unless otherwise specifically provided.

Premiums paid on all bonds under the provisions of this section shall be paid out of the state treasury upon warrant of the auditor, which shall be issued upon the approval of the bonds as herein provided; provided, however, that the said premiums shall be at the lowest rate obtainable. If from any cause such guaranty or surety bond or bonds cannot be obtained in whole or in part because of refusal of said guaranty or surety companies, at a reasonable rate in the judgment of the insurance commissioner or for other cause, to make such bond or bonds, upon certificate of the commissioner of insurance to that effect, the officer or officers having thus been unable to make a bond or bonds may make such bond with personal or individual surety in the required penalty, to be approved by the Governor and filed and recorded as directed herein, together with the certificate of the commissioner of insurance attached to the bond.

HISTORY:

Codes, 1906, § 3462; Hemingway's 1917, § 2800; 1930, § 2887; 1942, § 4032; Laws, 1902, ch. 53; Laws, 1908, ch. 191.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 7-11-4 provides that the words "state land commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Prison auditor's bond, see § 47-5-35.

Effect of lack of seal, see § 75-19-7.

Assuming duties of office before taking oath, see § 97-11-41.

RESEARCH REFERENCES

ALR.

Public officer's bond as subject to forfeiture for malfeasance in office. 4 A.L.R.2d 1348.

What period of limitation governs in an action against a public officer and the surety on his official bond. 18 A.L.R.2d 1176.

Liability of clerk of court, county clerk or prothonotary, or surety on bond, for negligent or wrongful acts of deputies or assistants. 71 A.L.R.2d 1140.

Am. Jur.

3A Am. Jur. Legal Forms 2d, Bonds §§ 43:2 et seq. (statutory bonds).

12 Am. Jur. 2d, Bonds §§ 4 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 126, 490, 491.

CJS.

67 C.J.S., Officers and Public Employees §§ 73, 74, 473 et seq.

§ 25-1-15. Conditions of official bonds; new bonds to be secured every four years.

(1) The bonds of all public officers required to give individual bond shall be conditioned in the following form, to wit:

"Whereas, the above bound A B was duly elected (or appointed) to the office of ________ on the ________ day of ________, for the term of ________ years from the ________ day of ________; therefore, if he shall faithfully perform all the duties of said office during his continuance therein, then the above obligation to be void."

A new bond in the amount required by law shall be secured at the beginning of each new term of office or every four (4) years, whichever is less.

(2) The bonds of all public employees required to give individual bond shall be conditioned in the following form, to wit:

"Whereas, the above bound A B was duly employed (or appointed) to the position of ________ on the ________ day of ________; therefore, if he shall faithfully perform all the duties of said position during his continuance therein, then the above obligation to be void."

A new bond in an amount not less than that required by law shall be secured upon employment and coverage shall continue by the securing of a new bond every four (4) years concurrent with the normal election cycle of the Governor or with the normal election cycle of the local government applicable to the employee.

(3) A failure to observe the form herein prescribed shall not vitiate any official bond; and all official bonds shall be valid and binding in whatever form they may be taken, except so far as they may be conditioned for the performance of acts in violation of the laws or policy of the state. Whether in

the proper penalty or without any penalty, whether correct or incorrect in its recitals as to the term of office or otherwise, whether properly payable, whether approved by the proper officer or not approved by any, or if irregular in any other respect, such bond, if delivered as the official bond of the officer or employee and serving as such, shall be obligatory on everyone who subscribed it for the purpose of making the official bond of such officer or employee to the full penalty or, if it has no penalty, to the full penalty of the bond which might have been required.

(4) All blanket bonds given on positions of public employment shall be conditioned upon the faithful performance of all the duties of the positions covered and insured by said blanket bond. A new bond in an amount not less than that required by law for public employees shall be secured at the beginning of each new term of office of the public or appointed official by whom they are employed, if applicable, or at least every four (4) years concurrent with the normal election cycle of the Governor.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 12 (3); 1857, ch. 6, art 186; 1871, § 309; 1880, § 403; 1892, § 3055; 1906, § 3463; Hemingway's 1917, § 2801; 1930, § 2888; 1942, § 4033; Laws, 1986, ch. 458, § 1; Laws, 2000, ch. 426, § 1, eff from and after July 1, 2000.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the third paragraph of (1), as inserted by Laws of 2000, ch. 426, § 1. The words "each new term of office or every four (4) year, whichever is less" were changed to "each new term of office or every four (4) years, whichever is less." The Joint Committee ratified the correction at its June 29, 2000, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph of subsection (2). The words "the above A B was duly employed" were changed to "the above bound A B was duly employed." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Official bonds, what are.
3. Validity of bonds.
4. Liability on bonds.
5. Actions on bonds.

1. In general.

This statute is remedial and should be liberally construed. Maryland Casualty Co. v. Terry, 184 Miss. 33, 185 So. 228, 1938 Miss. LEXIS 317 (Miss. 1938).

Section 82, Const 1890, requiring the legislature to fix the penalty of official bonds, has no application to offices created by statute. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520, 27 So. 609, 1900 Miss. LEXIS 13 (Miss. 1898).

2. Official bonds, what are.

Bond of the treasurer of a levee board is an "official bond." Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

3. Validity of bonds.

Although a supervisor's official bond specified a penalty in a sum less than that required by the provisions of Code 1942, § 2872, both the supervisor and his surety were actually bound to the full amount of the statutorily fixed penalty. State v. Moody, 198 So. 2d 586, 1967 Miss. LEXIS 1268 (Miss. 1967).

Bond of officer is binding on every person who subscribes it. State ex rel. Berry v. Hundley, 125 Miss. 355, 87 So. 890, 1921 Miss. LEXIS 131 (Miss. 1921).

Failure of treasurer of levee board to sign his bond as principal where the bond was delivered as his official bond and acted upon as such is immaterial. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

Official bond is not invalidated by addition of condition not required by law. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

Bond given by member of board of supervisors, and duly approved by the proper officers, was valid although the officers made an incorrect calculation of the amount of the penalty. State ex rel. Mitchell v. Smith, 87 Miss. 551, 40 So. 22 (Miss. 1905).

When one signs what purports and is intended to be an official bond, whether as principal obligor or surety, the law writes in all necessary recitals, including the proper penalty. State ex rel. Mitchell v. Smith, 87 Miss. 551, 40 So. 22 (Miss. 1905).

Where the municipal authorities fix the amount of the bond of the town treasurer and approve and accept as his official bond one not signed by him, but signed by certain persons as his sureties who signed without his request, it is valid under this section. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520, 27 So. 609, 1900 Miss. LEXIS 13 (Miss. 1898).

The meaning of the section is not that the bond shall be good in the absence of the prescribed form as a common law obligation, but that it shall be valid and binding as a statutory bond. Cox v. Ross, 56 Miss. 481, 1879 Miss. LEXIS 148 (Miss. 1879).

4. Liability on bonds.

A bond executed by a surety company covering one's duties as night-watchman of a town, did not cover injury sustained by the plaintiff by reason of an assault and battery by one exercising his duties as night marshal notwithstanding it appeared that he had been temporarily appointed by resolutions of the town mayor and board of aldermen to assume the duties of night-watchman until the bond required for night marshal was obtained. Maryland Casualty Co. v. Terry, 184 Miss. 33, 185 So. 228, 1938 Miss. LEXIS 317 (Miss. 1938).

Recovery may be had on county supervisors' bonds for injury resulting from their refusal to perform or negligence in performing ministerial duties. Walton v. Colmer, 169 Miss. 182, 147 So. 331, 148 So. 635, 1933 Miss. LEXIS 3 (Miss. 1933).

Recovery may be had on county supervisors' official bonds for county funds in insolvent bank, selected by them as county depository without requiring it to furnish securities. Walton v. Colmer, 169 Miss. 182, 147 So. 331, 148 So. 635, 1933 Miss. LEXIS 3 (Miss. 1933).

Justice of peace liable on bond for damages from his false certificate of acknowledgment. Hodges v. Mills, 139 Miss. 347, 104 So. 165, 1925 Miss. LEXIS 155 (Miss. 1925).

Sheriff was not liable on bond for failure to return execution issued on void judgment. Union Motor Car Co. v. Cartledge, 133 Miss. 318, 97 So. 801, 1923 Miss. LEXIS 153 (Miss. 1923).

County treasurers are liable on their official bonds for the absolute safety of all money coming into their hands, unless it be lost by the act of God or the public enemy. Arnold v. State, 77 Miss. 463, 27 So. 596, 1899 Miss. LEXIS 80 (Miss. 1899).

5. Actions on bonds.

Bill alleging that clerk received and wrongfully kept a deposit for cost earned by sheriff, and that it was clerk's duty to pay sheriff's fees out of the amount deposited, stated cause of action on clerk's bond. United States Fidelity & Guaranty Co. v. Young, 128 Miss. 296, 91 So. 3, 1922 Miss. LEXIS 116 (Miss. 1922).

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A principal is not a public employee who is required to give an individual bond as provided by 25-1-15(2); therefore, such positions may be covered by a blanket bond so long as the blanket bond comports with the requirements of 25-1-15(4) wherein each position and the requisite amount of coverage for each position is listed. 1996 Miss. Op. Att'y Gen. 222.

Section 37-39-21 is written in the singular which would indicate that any and all purchase agents must be covered by an individual bond pursuant to Section 25-1-15(2). 1996 Miss. Op. Att'y Gen. 222.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Bonds §§ 4 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 494- 496.

3A Am. Jur. Legal Forms 2d, Bonds §§ 43:18, 43:20 (general form of public officer's bond).

15A Am. Jur. Legal Forms 2d, Public Officers §§ 213:29 et seq. (official bond).

CJS.

67 C.J.S., Officers and Public Employees §§ 457, 473 et seq.

§ 25-1-17. Official bonds payable to state.

The bonds of all public officers and public employees required to give bond shall be made payable to the state, and shall be put in suit in the name of the state for the use and benefit of any person injured by the breach thereof. Such bonds shall not be void on the first recovery, but may be put in suit from time to time by any party injured by the breach thereof, until the whole penalty shall be recovered.

HISTORY:

Codes, 1857, ch. 6, art 188; 1871, § 311; 1880, § 404; 1892, § 3056; 1906, § 3464; Hemingway's 1917, § 2802; 1930, § 2889; 1942, § 4034; Laws, 1986, ch. 458, § 2, eff from and after October 1, 1986.

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Suit by Attorney General on bond of state officer, see § 7-5-47.

Requirement that bonds be payable to state, see § 11-1-27.

JUDICIAL DECISIONS

ANALYSIS

1. Liability in general.
2. Actions on bonds — pleading.
3. —Parties.

1. Liability in general.

Where a notary is required by statute to give a bond with sureties for the performance of his official duties, he and his sureties will be liable in an action for any breach of conditions of the bond, provided such breach is a proximate cause of a loss or injury, although it need not be the sole loss. United States Fidelity & Guaranty Co. v. State, 211 Miss. 864, 53 So. 2d 11, 1951 Miss. LEXIS 419 (Miss. 1951).

Under the statute any person injured by the breach of bond of a notary can recover, and there are no limitations or restrictions in so far as the liability of the officer and his surety are concerned so long as the damage is the result of the breach and the statute does not require that there be reliance by the injured party. United States Fidelity & Guaranty Co. v. State, 211 Miss. 864, 53 So. 2d 11, 1951 Miss. LEXIS 419 (Miss. 1951).

The statutory provision imposing a liability upon a county superintendent of education and his official bond to holders of pay certificates issued by him in excess of the amount of funds available or of the budget estimate for the current year, without referring to his liability under a former statute making a county superintendent and his bondsmen liable to school teachers and carriers for any injury inflicted by him in violating his official duties in employing them, does not affect the remedy therefor, unless a pay certificate is issued to the wrongfully employed teacher or carrier, the face amount of which covers the damage he has sustained, and the liability of the superintendent on the certificate is fixed at a sum certain without reference to the damage sustained by the one to whom the certificate was issued. State use of Rogers v. Newton, 191 Miss. 611, 3 So. 2d 816, 1941 Miss. LEXIS 166 (Miss. 1941).

Surety was not exempt from liability because bond of supervisor was made payable to county instead of to State. State use of Russell v. McRae, 169 Miss. 169, 152 So. 826, 1934 Miss. LEXIS 26 (Miss. 1934).

Recovery may be had on county supervisors' bonds for injury resulting from their refusal to perform or negligence in performing ministerial duties. Walton v. Colmer, 169 Miss. 182, 147 So. 331, 148 So. 635, 1933 Miss. LEXIS 3 (Miss. 1933).

Recovery may be had on county supervisors' official bonds for county funds in insolvent bank, selected by them as county depository without requiring it to furnish securities. Walton v. Colmer, 169 Miss. 182, 147 So. 331, 148 So. 635, 1933 Miss. LEXIS 3 (Miss. 1933).

2. Actions on bonds — pleading.

Declaration against member of board of supervisors for alleged tort joining in same count surety on official bond was not demurrable as joining causes of action of tort and contract in one count. State use of Russell v. McRae, 169 Miss. 169, 152 So. 826, 1934 Miss. LEXIS 26 (Miss. 1934).

In a suit on a bond where a defendant pleads a former recovery, it is not a good replication to aver that the breaches which had occured before the former suit are different from those in said suit, and were unknown to plaintiff when that suit was brought, without an averment of a fraudulent concealment thereof by the defendant; and the statute does not affect this. State use of Hinds County v. Morrison, 60 Miss. 74, 1882 Miss. LEXIS 12 (Miss. 1882).

3. —Parties.

In determining the existence of diversity of citizenship essential to Federal jurisdiction, the state in whose name the suit is brought on an official bond for the benefit of individuals claiming to have sustained damages in consequence of a breach of official duty under this section is merely a nominal party not to be considered. Thames v. Mississippi, 117 F.2d 949, 1941 U.S. App. LEXIS 4382 (5th Cir. Miss.), cert. denied, 314 U.S. 630, 62 S. Ct. 63, 86 L. Ed. 506, 1941 U.S. LEXIS 394 (U.S. 1941).

Notwithstanding this section the state, though nominally the obligee, is not a necessary party to a suit in chancery on the bond of the chancery clerk acting as guardian of minors to recover their estate. Patty v. Williams, 71 Miss. 837, 15 So. 43, 1894 Miss. LEXIS 38 (Miss. 1894).

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Bond which secures the patient funds held by the state must be payable to the state. 2003 Miss. Op. Att'y Gen. 753.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Bonds §§ 4 et seq.

CJS.

67 C.J.S., Officers §§ 48-54, 473 et seq.

§ 25-1-19. Approval of bonds of county and beat officers.

(1) The bond of the chancery clerk and circuit clerk of each county shall be approved by the board of supervisors of the county. The bond of the members of the board of supervisors of the county shall be approved by the chancery clerk of such county. The bonds of all other county officers and employees, or officers and employees for any district, subdivision, board or commission of a county, including public school districts, shall be approved by the board of supervisors of such county. All the bonds shall be filed and recorded in the office of the clerk of the chancery court of the county, except that the original of the chancery clerk's bond, after it is recorded, shall be deposited and filed in the office of the clerk of the circuit court.

(2) The bond of any municipal officer or employee required to give bond shall be approved by the governing authority of such municipality. All said bonds shall be filed and recorded in the office of the municipal clerk of said municipality.

(3) The bonds of all other officers and employees, unless otherwise provided by law, shall be approved by and filed with the appointing authority of such officer or employee.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 22 (2); 1857, ch. 6, art 187; 1871, § 310; 1880, §§ 405, 406; 1892, § 3057; 1906, § 3465; Hemingway's 1917, § 2803; 1930, § 2890; 1942, § 4035; Laws, 1986, ch. 458, § 3; Laws, 1988, ch. 471; Laws, 1988, ch. 488, § 1, eff from and after passage (approved April 30, 1988).

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Approval by mayor of bonds payable to municipality, see § 21-3-17.

Fees for approving bond of county officer, see § 25-7-43.

JUDICIAL DECISIONS

1. In general.

The Supreme Court was without authority to review judicially the action of the president of a board of supervisors and the clerk of the chancery court in disproving the bond offered by a county supervisor, or to require them to approve the same, even though they failed to interpret Code 1930, § 2892 as being in pari materia with Code 1930, §§ 2891 and 2893, and also to construe it in connection with § 112 of the State Constitution, since such officials, even though acting judicially when passing upon the sufficiency of the bonds of other county officials, did not constitute a court of record or a tribunal required to keep a record of their findings. Fairley v. Ladnier, 190 Miss. 514, 200 So. 724, 1941 Miss. LEXIS 71 (Miss. 1941).

Even if certiorari would lie to the supreme court to a refusal of the president of a board of supervisors and the clerk of the chancery court to approve the tendered bond of another county official, the supreme court would be limited in reviewing the record to a consideration of the bond, affidavits of financial worth and the other security offered, and would be without the right to consider the evidence upon which such officials made their findings or the facts set forth therein. Fairley v. Ladnier, 190 Miss. 514, 200 So. 724, 1941 Miss. LEXIS 71 (Miss. 1941).

The president of the board of supervisors, in approving or disapproving bonds of county officers, acts judicially and, however unjust or arbitrary his acts may be, they are not subject to revision by mandamus. Shotwell v. Covington, 69 Miss. 735, 12 So. 260, 1892 Miss. LEXIS 17 (Miss. 1892).

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Bonds §§ 4 et seq.

CJS.

67 C.J.S., Officers §§ 48-54, 473 et seq.

§ 25-1-21. Affidavit of worth.

Each surety, other than a surety company, on the official bond of any public officer or employee shall make affidavit before some officer competent to administer oaths that he is worth a certain sum, to be specified, in land owned and held by him in his own name and right in fee simple, or for life or a term of not less than twenty (20) years, and situated in the county, over and above all legal exemptions and all his debts and liabilities, including the amount of his liability on any other official bond where the term of office for which the same was given has not expired or where it has expired within a period of five (5) years from the date of such affidavit; and such affidavit shall be endorsed on or annexed to the bond.

Said surety shall set forth in such affidavit a full and clear description of the land, the actual cash value thereof, and the amount of any encumbrance thereon, if any.

HISTORY:

Codes, 1857, ch. 6, art 187; 1871, § 310; 1880, §§ 407, 408; 1892, §§ 3058, 3059; 1906, §§ 3466, 3467; Hemingway's 1917, §§ 2804, 2805; 1930, §§ 2891, 2892; 1942, §§ 4036, 4037; Laws, 1942, ch. 222; Laws, 1986, ch. 458, § 4, eff from and after October 1, 1986.

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Right to inspect land described in affidavit, see § 25-1-23.

Qualifications of surety companies, see § 83-27-1.

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A review of all the sections in this chapter show that these statutes are intended to apply to elected or appointed officials having a duty to the public in general, and that they do not apply to guardians, executors or administrators of individuals or their estates. 1991 Miss. Op. Att'y Gen. 876.

RESEARCH REFERENCES

CJS.
67 C.J.S., Officers §§ 476, 486, 487.

§ 25-1-23. Procedure for determining sufficiency of doubtful bond.

The officers by whom official bonds of public officials and employees are to be approved shall have the right to inspect the land described in the affidavit made by a surety on any such bond, and shall have the right to orally examine the surety and others touching the description and value of such land. If the approving officers shall fail or refuse to approve any such official bond within fifteen (15) days after it is presented to them by any duly elected or appointed officer or employee and such officer or employee is debarred of his office or position by reason of such failure or refusal, the officer or employee thus debarred may, within ten (10) days after the expiration of the said fifteen-day period, appeal to the chancery court of the county, upon giving bond with sufficient sureties in a penalty of One Hundred Dollars ($100.00), payable to the state and conditioned that he will perform the decree of the chancery court. The appeal bond, if sufficient, shall be approved by the clerk of the chancery court and forthwith delivered to the officers who have failed or refused to approve the official bond.

When the appeal bond has been approved and delivered to the approving officers, they shall immediately file it, together with the official bond and the affidavits by the sureties that are annexed to it, in the office of the clerk of the chancery court; and the cause shall be immediately entered on the issue docket of the chancery court as a suit in equity in the name of the aggrieved officer or employee, as complainant, and in the names of the approving officers, as defendants, which cause shall then be at issue and shall be a preference case. The controversy shall be tried de novo, either in term or in vacation, at a time to be fixed by an order made by the chancellor, and no other or further notice of the trial shall be necessary. The issue shall be the sufficiency vel non of the official bond, and the burden of proof shall be upon the appealing officer or employee.

If the bond be adjudged to be sufficient and the approving officers are still unwilling to approve it, the appealing officer or employee may deliver to the approving officers certified copies of the bond, the affidavits of the sureties annexed to it, and the decree of the chancery court; and he shall thereupon be entitled to have the oath of office administered to him and to occupy the office to which he was theretofore elected or appointed.

If the bond be adjudged to be insufficient, a decree shall be rendered against the appealing officer or employee and the sureties on the appeal bond, requiring them to pay the costs of the proceeding in the chancery court; but such adjudication shall not preclude the appealing officer or employee from furnishing a sufficient bond, and the approval thereof by the approving officers, at any time before another person has been duly elected or appointed to the office or position.

HISTORY:

Codes, 1880, § 409; 1892, § 3060; 1906, § 3468; Hemingway's 1917, § 2806; 1930, § 2893; 1942, § 4038; Laws, 1942, ch. 222; Laws, 1986, ch. 458, § 5, eff from and after October 1, 1986.

Cross References —

Penalty for approving worthless official bond, see § 97-11-9.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Bonds §§ 4 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 494- 496.

CJS.

67 C.J.S., Officers and Public Employees §§ 355-357476, 486, 487.

§ 25-1-25. New bond required in certain cases.

In case the sureties or any of them, of any public officer or employee shall permanently remove out of the state or become insolvent, or if from any cause an official bond shall be found insufficient, the Governor in the case of a state officer or employee, and the appropriate governing authority in the case of a local officer or employee, shall notify such officer or employee to appear at a day and place to be named within ten (10) days thereafter, to give a new bond with other sufficient sureties in a penalty equal to that of the former bond and with the like condition, or to show cause why the same should not be required. If such officer or employee shall fail or neglect so to do within a time to be designated, his office or position shall thereby become vacant and he shall cease to discharge any of the duties thereof. If a state officer or employee, the Governor shall cause the vacancy to be filled as in other cases; and, if a local office or employee, the vacancy shall be filled as in other cases of vacancy in local offices. From proceedings under this section there shall be no appeal; and if the officer or employee to be notified be without the state or abscond, he may be notified by publication as defendants in chancery are so notified.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 3 (6); 1857, ch. 6, art 192; 1871, § 315; 1880, § 411; 1892, § 3062; 1906, § 3469; Hemingway's 1917, § 2807; 1930, § 2894; 1942, § 4039; Laws, 1986, ch. 458, § 6, eff from and after October 1, 1986.

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice.

1. In general.

The sureties on a new bond given under this section are not liable for defaults occurring before its execution. Lewenthall v. State, 51 Miss. 645, 1875 Miss. LEXIS 89 (Miss. 1875).

2. Notice.

A writ of mandamus could not be ordered to compel a Board of Supervisors to give notice to the chancery clerk of the county to appear before it and show cause why he should not be required to give a legal, valid, and solvent official bond based on the allegation that the sureties on such clerk's bond were then insolvent, where there was no showing that the Board had made the essential preliminary finding that the officer's bond was insufficient. Luter v. Board of Sup'rs, 186 Miss. 24, 189 So. 94, 1939 Miss. LEXIS 215 (Miss. 1939).

Governor must notify officer to appear at a day and place to be named within ten days to give a new bond. Broom v. Henry, 136 Miss. 132, 100 So. 602, 1924 Miss. LEXIS 110 (Miss. 1924).

Until notice is given and expiration of time to file new bond, no vacancy occurs, and the governor cannot appoint another to fill the alleged vacancy. Broom v. Henry, 136 Miss. 132, 100 So. 602, 1924 Miss. LEXIS 110 (Miss. 1924).

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The county tax assessor's office must be open for business on all business days from 8:00 a.m. to 5:00 p.m., except when the board of supervisors authorizes it to be closed at 12:00 noon one business day of each week, or all day Saturday of each week, or at 12:00 noon on Saturday and at 12:00 noon on one additional business day of each week. 2002 Miss. Op. Att'y Gen. 315.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees § 490, 520.

3 Am. Jur. Legal Forms 2d, Bonds § 43:18 (general form of official bond).

CJS.

67 C.J.S., Officers §§ 73, 74.

§ 25-1-27. Release of surety on bond of local officer or employee.

In case a surety on any bond of any local officer or employee shall conceive himself to be in danger of suffering by being such surety and shall desire to be relieved therefrom, he may petition the board of supervisors or the municipal governing authority, as the case may be, for relief in the premises. The appropriate local governing authority shall thereupon order that the officer or employee give a new bond with sufficient sureties in a penalty not less than the first bond and conditioned according to law, and notice of such order shall forthwith be given to such officer or employee. Said new bond shall be furnished within such reasonable time as the governing authority may direct, not exceeding thirty (30) days from the date of said order; and on the giving of such bond and the approval thereof by the governing authority, the petitioner shall be discharged from further liability on the bond as to the performances of all official duties after the giving of such new bond. If such officer or employee shall fail or refuse to comply with the order to give a new bond, his office or position shall thereby become vacant and the vacancy shall be filled as in other cases of vacancies in local offices or positions.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 9 (1); 1857, ch. 6, art 193; 1871, § 316; 1880, § 412; 1892, § 3063; 1906, § 3470; Hemingway's 1917, § 2808; 1930, § 2895; 1942, § 4040; Laws, 1922, ch. 237; Laws, 1986, ch. 458, § 7, eff from and after October 1, 1986.

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Qualification of surety companies, see § 83-27-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Release.

1. In general.

The sureties on the new bond are not liable for defaults occurring before its execution. Lewenthall v. State, 51 Miss. 645, 1875 Miss. LEXIS 89 (Miss. 1875).

2. Release.

A petition by a surety company to a board of supervisors couched in the language of this section in order to be relieved from the obligation of surety to a justice of the peace did not give rise to a cause of action against it for libel, both because the surety was thereby exercising a legal right and because the words themselves were not libelous. Morehead v. United States Fidelity & Guaranty Co., 187 Miss. 55, 192 So. 300, 1939 Miss. LEXIS 94 (Miss. 1939).

A failure to give a new bond, when ordered to do so under the section ipso facto vacates the office, and the petitioning sureties are no longer liable. Bennett v. State, 58 Miss. 556, 1880 Miss. LEXIS 158 (Miss. 1882); State v. Morgan, 59 Miss. 349, 1881 Miss. LEXIS 132 (Miss. 1881).

Sureties are not released, nor are additional sureties bound, by erasing the names of the former and substituting those of the latter by direction of the board of supervisors. State v. Matthews, 57 Miss. 1, 1879 Miss. LEXIS 1 (Miss. 1879).

RESEARCH REFERENCES

CJS.

67 C.J.S., Officers §§ 368, 369.

§ 25-1-29. Release of surety on bond of state officer.

In case a surety on any bond of any state officer shall desire to be relieved therefrom, he may petition to the Governor to that purpose and give notice thereof to the officer from whose bond he wishes to be relieved; and the Governor shall also communicate and give notice to such officer. If said officer shall not within such reasonable time as the Governor shall direct, not exceeding thirty (30) days, present a new bond in a penalty not less than the first and conditioned according to law, such office shall be declared vacant by the Governor. On the giving of such new bond and the approval as required by law, the petitioner shall be discharged from further liability on the bond as to the performance of all official duties after the giving of such new bond. In the event such surety shall be relieved, he shall refund to the state the unearned premium on such bond.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 9 (1); 1857, ch. 6, art 193; 1871, § 316; 1880, § 412; 1892, § 3063; 1906, §§ 2385, 3471; Hemingway's 1917, §§ 2809, 4777; 1930, §§ 2896, 4831; 1942, §§ 3989, 4041; Laws, 1896, ch. 51.

Cross References —

Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Qualification of surety companies, see § 83-27-1.

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 516, 534, 535, 538.

CJS.
67 C.J.S., Officers §§ 368, 369.

§ 25-1-31. Personal bonds.

All bonds required by law to be made by all public officers and employees shall be made in a surety company, authorized to do business in this state.

Any such officer or employee may make affidavit, such affidavit to include two (2) letters of refusal of such bond by bonding companies licensed to do business in the State of Mississippi, that he has made diligent effort to obtain the surety bond required by this section and was unable to do so. In such event, such officer or employee may make his official bond with two (2) or more personal sureties, qualified as provided by law.

HISTORY:
Codes, 1930, § 2897; 1942, § 4042; Laws, 1924, ch. 233; Laws, 1962, ch. 495; Laws, 1981, ch. 471, § 45; Laws, 1982, ch. 423, § 9; Laws, 1986, ch. 458, § 8, eff from and after October 1, 1986.

Cross References —
Authority of Legislature to fix conditions of official bonds, see Miss. Const. Art. 4, § 82.

Approval of bonds of county and beat officers, see § 25-1-19.

OPINIONS OF THE ATTORNEY GENERAL

A review of all the sections in this chapter show that these statutes are intended to apply to elected or appointed officials having a duty to the public in general, and that they do not apply to guardians, executors or administrators of individuals or their estates. 1991 Miss. Op. Att'y Gen. 876.

If a county officer is unable to be bonded by a surety company he may follow the procedures outlined in the second paragraph of Section 25-1-31. 1995 Miss. Op. Att'y Gen. 779.

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 490, 491.

CJS.
67 C.J.S., Officers §§ 73, 74.

§ 25-1-33. Premiums on official bonds.

(1) The premiums on all bonds given by public officers and employees shall be paid out of any funds available for such expenditure.

(2) Any authority, board, commission or other public entity created by state law is hereby authorized and empowered to expend such portion of its funds as may be found necessary to pay all premiums on surety bonds drawn in favor of the State of Mississippi, which such public entity may require its employees to furnish for the faithful performance of their duties.

(3) This section is to apply only to the payment of such surety bond premiums as are not now otherwise provided for by law.

HISTORY:

Codes, 1942, § 4043; Laws, 1940, ch. 148; Laws, 1986, ch. 458, § 9, eff from and after October 1, 1986.

Cross References —

Form and conditions of official bonds, see § 25-1-15.

OPINIONS OF THE ATTORNEY GENERAL

No authority requires the county to bond the county medical examiner. However, a county may, within its discretion, provide such a bond. See Section 25-1-33. 1996 Miss. Op. Att'y Gen. 835.

Counties may not pay the premium on the required bond for official court reporters of the chancery and circuit court, but may pay the premium for the bonds of county court reporters and may pay the dues for the membership of the county court reporter in the court reporter's association upon making a determination that such dues are reasonable and necessary to the performance of the court reporter's duties. 1999 Miss. Op. Att'y Gen. 53.

A school district's responsibility for the payment of the premiums on the surety bonds of its members is for the amount that is necessary to obtain a good and sufficient bond; the district would not be required to bear the expense of that portion of a premium that is over and above the amount determined to be necessary to obtain a good and sufficient bond. 2003 Miss. Op. Att'y Gen. 761.

Section 25-1-33 applies to bonds given by a school board member pursuant to Section 37-6-15(1). 2003 Miss. Op. Att'y Gen. 170.

Payment of a premium that is over and above what is necessary to acquire a good and sufficient bond as determined by a school board would be a waste of taxpayers' money. 2003 Miss. Op. Att'y Gen. 170.

RESEARCH REFERENCES

Am. Jur.

63 Am. Jur. 2d, Public Officers and Employees §§ 487, 488.

CJS.

67 C.J.S., Officers §§ 73, 74, 473–475.

§ 25-1-35. Commission not necessary.

All county officers and officers chosen for any portion or district of a county and all municipal officers and officers chosen for any portion or ward of a municipality, shall be authorized to exercise the duties and functions of the office to which they are elected, after they have received certificates of their election, as provided by law, whether they have received their commissions or not; but such officers shall first give bond, if any, required by law or ordinance, and take the oath of office prescribed by the constitution.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 12 (3); 1857, ch. 6, art 189; 1871, § 312; 1880, § 414; 1892, § 3064; 1906, § 3472; Hemingway's 1917, § 2810; 1930, § 2898; 1942, § 4044; Laws, 1972, ch. 342, § 1, eff from and after passage (approved April 19, 1972).

Cross References —

Form of commissions, see Miss. Const. Art. 5, § 127.

Form of oath, see Miss. Const. Art. 14, § 268.

Certification by Secretary of State of official character of state officer, see § 7-3-43.

Execution by mayor of commissions and appointments of officers, see § 21-3-17.

Penalty for assuming duties of office before taking oath and giving bond, see § 97-11-41.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees § 122.

CJS.
67 C.J.S., Officers §§ 10, 11, 457 et seq.

§ 25-1-37. Acts of de facto officer valid.

The official acts of any person in possession of a public office and exercising the functions thereof shall be valid and binding as official acts in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold the office or not and whether such person be lawfully qualified or not; but such person shall be liable to all the penalties imposed by law for usurping or unlawfully holding office, or for exercising the functions thereof without lawful right or without being qualified according to law.

HISTORY:
Codes, 1857, ch. 6, art 194; 1871, § 317; 1880, § 415; 1892, § 3065; 1906, § 3473; Hemingway's 1917, § 2811; 1930, § 2899; 1942, § 4045.

Cross References —
Penalty for assuming duties of office before taking oath or giving bond, see § 97-11-41.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Nature of de facto office or officer.
3. Particular de facto officers—In general.
4. —Person appointed, deputized, or commissioned.
5. —Failure to take oath of office.
6. Validity of acts of de facto officers—In general.
7. —Superiority of officer having legal right.
8. —Surrender of office by de jure officer.
9. Rights of de facto officers.

1. In general.

The statute is declaratory of the common law. Cooper v. Moore, 44 Miss. 386, 1870 Miss. LEXIS 123 (Miss. 1870).

2. Nature of de facto office or officer.

A person assuming, without authority, to exercise official powers does not become an officer de facto if his authority to exercise such powers is promptly challenged. Day v. McCandless, 167 Miss. 832, 142 So. 486, 1932 Miss. LEXIS 198 (Miss. 1932).

If de jure officer, in possession of office, performing its functions, refuses to yield possession, no one can take office from him by force and become de facto officer. Day v. McCandless, 167 Miss. 832, 142 So. 486, 1932 Miss. LEXIS 198 (Miss. 1932).

"De facto officer" is one who is such in fact but not in law, and whose acts are as effective as the acts of a de jure officer. State v. Boykin, 114 Miss. 527, 75 So. 378, 1917 Miss. LEXIS 60 (Miss. 1917).

A person who is actually in possession of an office under color of title and performing its functions, is a "de facto officer," whose actions cannot be impeached in any proceeding in which he is not a party. Rosetto v. Bay St. Louis, 97 Miss. 409, 52 So. 785, 1910 Miss. LEXIS 271 (Miss. 1910).

An officer de facto is one who exercises the powers and discharges the functions of an office, being then in the possession of the same under color of authority, but without actual right thereto. Adams v. Mississippi State Bank, 75 Miss. 701, 23 So. 395 (Miss. 1898).

Where there is neither colorable right to the office, nor previous performance of official functions, nor recognition of official character by the public, one who assumes to perform an official act is not a de facto officer. Dabney v. Hudson, 68 Miss. 292, 8 So. 545, 1890 Miss. LEXIS 51 (Miss. 1891).

A mere intruder into an office, acting without color of right and without recognition by the public, is not a de facto officer. Dabney v. Hudson, 68 Miss. 292, 8 So. 545, 1890 Miss. LEXIS 51 (Miss. 1891).

There cannot be a de facto and a de jure officer holding the same office at the same time. Cohn v. Beal, 61 Miss. 398, 1883 Miss. LEXIS 145 (Miss. 1883).

3. Particular de facto officers—In general.

Although the source of a county judge's authority to sit as a special circuit judge in another county was unclear, he was at least a de facto circuit judge, and his acts were valid against all persons affected thereby under this section. Crocker v. Sears, Roebuck & Co., 346 So. 2d 921, 22 U.C.C. Rep. Serv. (CBC) 349, 1977 Miss. LEXIS 2550 (Miss. 1977).

Where, although the city commission records did not show his appointment, the evidence showed that the individual in question had been sworn in as a police justice pro tem, that he had gone through the regular procedure of making out his personnel file, and that he had been regularly paid a salary and had acted in the capacity of a police justice, he was at least a de facto police justice and his acts were not void. Raper v. State, 317 So. 2d 709, 1975 Miss. LEXIS 1775 (Miss. 1975).

A mayor and commissioners who were continued in office under a decree of the chancery court after a new mayor and commissioner had been elected in a municipal election were de facto officers under the terms of this section, and their actions as such were not void. Krebs v. Bradley, 190 So. 2d 886, 1966 Miss. LEXIS 1418 (Miss. 1966).

Under this section a deputy clerk of a municipal board who was in possession of the office and recognized as such by the public, constituted a de facto officer whose acts were valid regardless of whether he was a de jure officer. In re Validation of Municipal Bonds, 188 Miss. 817, 196 So. 258, 1940 Miss. LEXIS 75 (Miss. 1940).

If highway commissioners are not de jure officers because not elected at time required by Constitution, they are de facto officers whose acts are valid so long as not challenged in legal manner. Trahan v. State Highway Com., 169 Miss. 732, 151 So. 178, 1933 Miss. LEXIS 7 (Miss. 1933).

County tax collector and surety on official bond held not liable to State Tax Collector for funds deposited in insolvent bank, which, under surrounding facts and circumstances, constituted de facto depository. Miller v. Batson, 160 Miss. 642, 134 So. 567, 1931 Miss. LEXIS 204 (Miss. 1931).

Mayor and aldermen performing duties of office without having qualified are de facto officers, with power to accept and approve bond of marshal as tax collector. Coker v. Wilkinson, 142 Miss. 1, 106 So. 886, 1926 Miss. LEXIS 52 (Miss. 1926).

Where the son of a circuit clerk, though ineligible to appointment as deputy because of minority, acts as his father's deputy and is generally recognized by the public as such, he is a de facto officer and a writ of attachment issued by him is not void. Wimberly v. Boland, 72 Miss. 241, 16 So. 905, 1894 Miss. LEXIS 121 (Miss. 1894).

4. —Person appointed, deputized, or commissioned.

At the time of a disciplinary hearing held by the Mississippi Real Estate Appraiser Licensing and Certification Board, all of the board members had been duly appointed by the Governor, thereby making them public officials; thus, pursuant to Miss. Code Ann. § 25-1-37, the members of the board, even if serving in violation of Miss. Code Ann. §§ 73-34-7(b) and (c), still had valid authority to act in official capacity as "de facto" officers. Miss. Real Estate Appraiser Licensing & Certification Bd. v. Schroeder, 980 So. 2d 275, 2007 Miss. App. LEXIS 430 (Miss. Ct. App. 2007).

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. Upchurch v. Oxford, 196 Miss. 339, 17 So. 2d 204, 1944 Miss. LEXIS 199 (Miss. 1944).

Special judge appointed by governor for particular term after resignation of regular judge was de facto judge whose title could not be raised by litigants in pleading suit; acts of de facto judge are valid. Bird v. State, 154 Miss. 493, 122 So. 539, 1929 Miss. LEXIS 154 (Miss. 1929).

Bond commissioners appointed by mayor and board of aldermen to construct sea wall, the municipal charter providing for their appointment, are at least de facto officers whose acts are valid, and whose right to office can be questioned only by the state. Sick v. Bay St. Louis, 113 Miss. 175, 74 So. 272, 1916 Miss. LEXIS 45 (Miss. 1916).

A special judge commissioned under Code 1930, § 997 by the governor to preside on the trial of a criminal case, the regular judge being disqualified, who assumes the position and discharges the duties thereof, is a de facto officer and his acts are valid, although he fails to take the official oath required by § 155 Const 1890, before assuming the duties of office. Powers v. State, 83 Miss. 691, 36 So. 6, 1903 Miss. LEXIS 90 (Miss. 1904), overruled, Jones v. State, 144 Miss. 52, 109 So. 265, 1926 Miss. LEXIS 341 (Miss. 1926).

Where a private person deputized by a justice of the peace to execute a warrant of arrest issued by him acts under the warrant in making the arrest he is entitled to the protection afforded a de facto officer in serving a warrant. Harris v. State, 72 Miss. 99, 16 So. 360, 1894 Miss. LEXIS 83 (Miss. 1894).

One acting generally as deputy sheriff, under written appointment from the sheriff, although not having qualified according to law, is a de facto officer, and his acts as between third parties must be held valid. Alabama & V. R. Co. v. Bolding, 69 Miss. 255, 13 So. 844, 1891 Miss. LEXIS 170 (Miss. 1891).

5. —Failure to take oath of office.

One elected mayor and discharging the duties and exercising the powers of that office was an officer de jure although he failed to take the oath of office. Town of Sumrall v. Polk, 118 Miss. 687, 79 So. 847, 1918 Miss. LEXIS 120 (Miss. 1918).

6. Validity of acts of de facto officers—In general.

In declaratory judgment action brought by State Ethics Commission regarding conflicts of interest involving public officials, collateral attack upon Commission's membership, alleging unconstitutional and illegal appointment, could not be allowed. Frazier v. State, 504 So. 2d 675, 1987 Miss. LEXIS 2394 (Miss. 1987).

The Jackson Redevelopment Agency was a legal entity entitled to exercise the power of eminent domain, even though it had failed to file the required annual reports; the fact that two of the seven commissioners of the redevelopment agency were not qualified to serve on the board of directors because they did not meet the statutory residence requirements did not invalidate the agency's exercise of its eminent domain powers where, under § 25-1-37, their right to office could not be impeached in a collateral proceeding; nor could a collateral proceeding be used to raise a claim that two of the commissioners had improperly failed to file statements regarding conflicts of interest and that three other commissioners were not qualified because they held other public office; however, the agency's action in condemning the property at issue was invalid under § 43-35-33 since a quorum of the commissioners was not present when the resolution to exercise the power of eminent domain was adopted. Jackson Redevelopment Authority v. King, Inc., 364 So. 2d 1104, 1978 Miss. LEXIS 2236 (Miss. 1978).

A person never formally appointed in writing as required by law who was employed by a sheriff as a deputy, had signed an oath of office, and had acted for a long time as a deputy in uniform without challenge, had the right to arrest for motor vehicle violations and to demand driver's licenses. United States v. Williams, 416 F.2d 4, 1969 U.S. App. LEXIS 10746 (5th Cir. Miss. 1969), cert. denied, 397 U.S. 910, 90 S. Ct. 908, 25 L. Ed. 2d 91, 1970 U.S. LEXIS 2991 (U.S. 1970), cert. denied, 397 U.S. 968, 90 S. Ct. 1008, 25 L. Ed. 2d 262, 1970 U.S. LEXIS 2728 (U.S. 1970).

A mayor and commissioners who were continued in office under a decree of the chancery court after a new mayor and commissioner had been elected in a municipal election were de facto officers under the terms of this section, and their actions as such were not void. Krebs v. Bradley, 190 So. 2d 886, 1966 Miss. LEXIS 1418 (Miss. 1966).

Acts in connection with trial and conviction in misdemeanor case of one acting as mayor and municipal judge, under appointment by governor because of absence of duly elected mayor in armed forces, were valid, since he was at least a de facto officer. Upchurch v. Oxford, 196 Miss. 339, 17 So. 2d 204, 1944 Miss. LEXIS 199 (Miss. 1944).

Acts of de facto officer are valid, so far as interest of public and of third person is involved. Miller v. Batson, 160 Miss. 642, 134 So. 567, 1931 Miss. LEXIS 204 (Miss. 1931).

Lawful acts of de facto officers are binding on third persons. Town of Sumrall v. Polk, 118 Miss. 687, 79 So. 847, 1918 Miss. LEXIS 120 (Miss. 1918).

Validity of acts of a justice of the peace, who was also mayor at the time of conviction, cannot be questioned by person convicted. Wilson v. State, 113 Miss. 748, 74 So. 657, 1917 Miss. LEXIS 150 (Miss. 1917).

Attachment issued by mayor of a town, who, after qualifying as deputy sheriff of the county, exercised the duties of mayor and ex officio justice of the peace until his term of office as mayor expired, was valid despite Const. Art 1, § 2. B. Altman & Co. v. Wall, 111 Miss. 198, 71 So. 318, 1916 Miss. LEXIS 268 (Miss. 1916).

Actions of de facto municipal officers are valid. Greene v. Rienzi, 87 Miss. 463, 40 So. 17, 1905 Miss. LEXIS 172 (Miss. 1905).

The law attaches validity to acts of de facto officers. Bell v. State, 38 So. 795 (Miss. 1905).

Election of one as school trustee, though made after the day set by statute, gave him at least color of office, and selection of a teacher by the board of which he was a member was valid. Whitman v. Owen, 76 Miss. 783, 25 So. 669, 1899 Miss. LEXIS 17 (Miss. 1899).

The fact that jurors and witnesses in a criminal case were sworn by one acting as a deputy clerk, but neither regularly appointed nor sworn, is not ground for a new trial; It is within this section. Mobley v. State, 46 Miss. 501, 1872 Miss. LEXIS 18 (Miss. 1872).

7. —Superiority of officer having legal right.

Acts of officer having legal right will be recognized in case of two de facto officers acting simultaneously under claim of right. Board of Mississippi Levee Comm'rs v. Montgomery, 145 Miss. 578, 110 So. 845, 1927 Miss. LEXIS 125 (Miss. 1927).

8. —Surrender of office by de jure officer.

Evidence established that de jure trustees of school district never surrendered office to trustees who attempted to supplant them, as respects validity of latter's acts. Day v. McCandless, 167 Miss. 832, 142 So. 486, 1932 Miss. LEXIS 198 (Miss. 1932).

9. Rights of de facto officers.

School superintendent was not estopped by entering into agreement with persons unlawfully assuming to act as school trustees during time when de jure trustees were functioning, since such persons suffered no injury thereby because they had no rights which could be invaded by such superintendent. Day v. McCandless, 167 Miss. 832, 142 So. 486, 1932 Miss. LEXIS 198 (Miss. 1932).

A de facto officer cannot sue for and recover from the county the compensation or fees of the office. Matthews v. Board of Supervisors, 53 Miss. 715, 1876 Miss. LEXIS 140 (Miss. 1876).

OPINIONS OF THE ATTORNEY GENERAL

Acts of de facto members of municipal party executive committees are valid pursuant to Miss. Code Section 25-1-37. 1993 Miss. Op. Att'y Gen. 292.

Although the statute gives the actions taken by "de facto" officers validity, it does not entitle these individuals to receive a salary or per diem for their services. 2000 Miss. Op. Att'y Gen. 295.

A newly elected school board member who casts a vote prior to being bonded and taking the oath of office violates Section 97-11-41; however, any vote so taken may be binding, as that of a de facto officer under Section 25-1-37. 2001 Miss. Op. Att'y Gen. 239.

Officers appointed by the Governor in vacation and not confirmed by the Senate, but who have taken the oath of office, may be "de facto" officers; and actions taken by "de facto" officers are valid. 2001 Miss. Op. Att'y Gen. 612.

RESEARCH REFERENCES

CJS.

67 C.J.S., Officers §§ 10, 11, 457 et seq.

§ 25-1-39. Deputy to discharge duty after death of officer.

If any state or county officer shall die having a deputy, the deputy may continue to discharge the duties of the office in the name of the deceased officer as if he had not died, until the vacancy in the office shall be filled according to law. The official bond of the deceased officer and his estate shall be a security for the faithful performance of the duties of the office by the deputy, who shall be subject to all the provisions of law applicable to his principal in his lifetime; and the personal representative of the decedent shall have like remedy against the deputy as the decedent would have if living. Where there are two judicial districts in a county and there be a deputy in each, the deputy of the first district shall discharge the duties of the office under the provisions of this section.

HISTORY:

Codes, 1857, ch. 4, art 26; 1871, § 394; 1880, § 423; 1892, § 3079; 1906, § 3487; Hemingway's 1917, § 2825; 1930, § 2900; 1942, § 4046.

Cross References —

Appointment of deputy sheriffs, see §§ 19-25-19, 19-25-21.

JUDICIAL DECISIONS

1. In general.

On the death of the land commissioner the employment of his deputy ceases when the successor of the land commissioner has been appointed and qualified. State ex rel. Brown v. Christmas, 126 Miss. 358, 88 So. 881, 1921 Miss. LEXIS 44 (Miss. 1921).

This section does not abridge the governor's constitutional authority (Const. § 103) to fill by appointment a vacancy occasioned by death of the sheriff. Baker v. Nichols, 111 Miss. 673, 72 So. 1, 1916 Miss. LEXIS 366 (Miss. 1916).

Under this section a deputy sheriff and tax collector may sell lands for taxes after the death of his principal and before the vacancy in the office has been filled. McRee v. Swalm, 81 Miss. 679, 33 So. 503, 1902 Miss. LEXIS 197 (Miss. 1902).

Statute, Code 1892, § 828 providing for performance by the coroner of sheriff's duties in case of vacancy in the office of sheriff and no deputy to act as authorized by law in case of death of the sheriff, or other causes (see Code 1942, § 3906), must be construed with this section; and such statute does not require performance of official duties by a deputy sheriff whose principal is alive and disqualified. Lipscomb v. State, 76 Miss. 223, 25 So. 158, 1898 Miss. LEXIS 130 (Miss. 1898).

RESEARCH REFERENCES

CJS.
67 C.J.S., Officers, §§ 468 et seq.

§ 25-1-41. Informal bonds valid.

All bonds or recognizances taken by any officer in the discharge of his duty shall be valid and binding on the obligors therein, whether taken in the form prescribed or not, so that the substantial matters required be contained therein; and such bonds shall only be void so far as they may be conditioned for the performance of acts in violation of the law or policy of the state. It shall be lawful to show by parol that any bond or recognizance was taken by an officer in the discharge of his duty, although such fact ought to appear upon the bond or recognizance, or in writing or of record, and do not so appear; and if an officer take a recognizance in a case where he should have taken a bond, it shall bind the parties in the same manner as if it had been authorized.

HISTORY:
Codes, 1857, ch. 6, art 201; 1871, § 324; 1880, § 422; 1892, § 3076; 1906, § 3484; Hemingway's 1917, § 2822; 1930, § 2901; 1942, § 4047.

Cross References —
Requirement that bonds be payable to state, see § 11-1-27.

Terms of appearance bond or recognizance of party to criminal proceeding, see § 99-5-5.

Sufficiency of bonds and recognizances taken in criminal cases, see § 99-5-21.

JUDICIAL DECISIONS

1. In general.
Promise, voluntarily made in bond executed for privilege of selling gasoline, to pay attorney's fees and other expenses incurred in collecting privilege tax and penalty, was enforceable, although not required by statute. Treas v. Price, 167 Miss. 121, 146 So. 630, 1933 Miss. LEXIS 88 (Miss. 1933).

Failure of treasurer of levee board to sign his bond as principal where the bond was delivered as his official bond and acted upon as such is immaterial. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

Official bond is not invalidated by addition of condition not required by law. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Bonds §§ 4 et seq.

CJS.
67 C.J.S., Officers and Public Employees § 474.

§ 25-1-43. Officer not to make contract without authority.

An officer shall not enter into any contract on behalf of the state, or of any county, city, town, or village thereof, without being specially authorized thereto by law or by an order of the board of supervisors or municipal authorities.

HISTORY:
Codes, Hutchinson's 1848, ch. 33, art 23; 1857, ch. 6, art 195; 1871, § 318; 1880, § 416; 1892, § 3066; 1906, § 3474; Hemingway's 1917, § 2812; 1930, § 2902; 1942, § 4048.

Cross References —
Penalty for unauthorized appropriation by municipal officers, see § 21-39-15.

For requirement that municipal appropriations be specific, see § 21-39-17.

Requirements for public purchases, see §§ 31-7-1 et seq.

JUDICIAL DECISIONS

1. In general.

The only authority of the president of the board of supervisors to execute a deed was evidenced by the board's order on its minutes which directed the conveyance of the land, retaining in the county one-half of the materials and if the deed is to be construed as conveying more, then it was unauthorized and ineffective to vest the full fee simple to the land. Thornhill v. Ford, 213 Miss. 49, 56 So. 2d 23, 1952 Miss. LEXIS 331 (Miss. 1952).

Orders entered on the minutes of the mayor and board of aldermen of a municipality with respect to the purchase of a fire engine, providing for the advertisement for bids and thereafter indicating the acceptance of a bid, were not sufficient to effectuate a valid sale, requisite elements having been omitted from the recitals of the minutes. American-Lafrance, Inc. v. Philadelphia, 183 Miss. 207, 184 So. 620, 1938 Miss. LEXIS 234 (Miss. 1938).

No contract can be entered into by any officer on behalf of a municipality unless "specially authorized thereto by law," or by an order of the board of municipal authorities. Kidder v. McClanahan, 126 Miss. 179, 88 So. 508, 1921 Miss. LEXIS 18 (Miss. 1921).

§ 25-1-45. Civil liability for failure to perform duty.

If any county, county district, or municipal officer who has executed bond for the faithful performance of duty shall knowingly or wilfully fail, neglect, or refuse to perform any duty required of him by law or shall violate his official obligations in any respect, the president or, in the absence or disability or default of the president, the vice-president of the board of supervisors in case of a county or county district officer, and the mayor in case of a municipal officer, or any person interested in either case shall cause suit to be brought on the bond of such officer for the recovery of the damages that may have been sustained thereby.

HISTORY:
Codes, 1857, ch. 64, art 62; 1871, § 2890; 1880, § 2757; 1892, § 3067; 1906, § 3475; Hemingway's 1917, § 2813; 1930, § 2903;

1942, § 4049; Laws, 1886, p 156; Laws, 1959, Ex Sess ch. 22, § 8.

Cross References —

Proceeding on bond of justice court judge, see § 9-11-7.

Bond of member of board of supervisors, see § 19-3-5.

Liability of sheriff, coroner, or other officer for failure to return execution, see § 19-25-41.

Liability of sheriff or deputy for failure to pay over money collected, see § 19-25-45.

Deduction from salary of state officer for absence from state, see § 25-3-51.

Deduction from salary of judge for absence from court, see § 25-3-57.

Penalty for Attorney General or district attorney advising or defending criminal, see § 97-11-3.

Penalty for approval of worthless official bond, see § 97-11-9.

Penalty for clerk refusing to give certified copy of papers upon demand, see § 97-11-17.

Penalty for failure of peace officer, to return person who has committed offense, see § 97-11-35.

Criminal liability of municipal and county officers for offenses respecting required records, see § 97-11-37.

JUDICIAL DECISIONS

1. In general.

The surety under a "blanket" public employees performance bond covering the administrator, trustees, librarian, dietitian, superintendent of nurses, and bookkeeper of a county hospital, was not entitled to recover from the administrator any part of a $6,000 shortage which occurred during the administrator's tenure at the hospital, where the administrator had inherited from his predecessor the mode of operation and continued it without objection by the trustees or by the State Auditing Department, and where the State Auditor's report as to the shortage made no attempt to fix responsibility for the shortage. Hartford Acci. & Indem. Co. v. Reedy, 233 So. 2d 799, 1970 Miss. LEXIS 1679 (Miss. 1970).

Neither county superintendent of education, nor sureties on his official bond, are liable for erroneously, but in good faith, issuing certificates against school funds under Code 1942, § 6349, for the purchase of fire extinguishers for use in school busses and payment of premiums on bonds executed by school-bus drivers. Barnett v. Lollar, 197 Miss. 574, 19 So. 2d 748, 1944 Miss. LEXIS 323 (Miss. 1944).

Theory of liability under Code 1942, § 2944, respecting appropriation of money to "any object, not authorized by law," is inapplicable with respect to liability of county superintendent of education for wrongfully issuing certificates against school funds. Barnett v. Lollar, 197 Miss. 574, 19 So. 2d 748, 1944 Miss. LEXIS 323 (Miss. 1944).

Matters of defense, such as honest mistake and good faith, in action against county superintendent of education and sureties on his official bond for wrongly issuing certificates under Code 1942, § 6349, must be pleaded and proved by the defendants, and need not be negatived in the complaint. Barnett v. Lollar, 197 Miss. 574, 19 So. 2d 748, 1944 Miss. LEXIS 323 (Miss. 1944).

Expenditure of public funds by a county officer, even though within the general field of his jurisdiction, may be so clearly and distinctly unlawful as to preclude the defense that he so acted in good faith and honest error. Barnett v. Lollar, 197 Miss. 574, 19 So. 2d 748, 1944 Miss. LEXIS 323 (Miss. 1944).

Common-law rule, that a public officer is not liable for errors or mistakes made by him in good faith when acting judicially or quasi judicially within the scope and subject matter over which he has been given jurisdiction, applies in respect to liability under this section. Barnett v. Lollar, 197 Miss. 574, 19 So. 2d 748, 1944 Miss. LEXIS 323 (Miss. 1944).

Public officers are insurers of the safety of public money coming into their hands by virtue of their office and are liable in all cases for its loss, unless caused by the act of God or the public enemy. Adams v. Lee, 72 Miss. 281, 16 So. 243, 1894 Miss. LEXIS 71 (Miss. 1894).

OPINIONS OF THE ATTORNEY GENERAL

If an officer or employee of the state or subdivision fails or refuses to make any report as set forth in Section 7-7-218, and that failure or refusal constitutes a breach of his or her faithful performance of duty, then recovery may be sought from the applicable bond. 2000 Miss. Op. Att'y Gen. 185.

RESEARCH REFERENCES

ALR.

Liability of clerk of court, county clerk or prothonotary, or surety on bond, for negligent or wrongful acts of deputies or assistants. 71 A.L.R.2d 1140.

Civil liability of judicial officer for malicious prosecution or abuse of process. 64 A.L.R.3d 1251.

Immunity of public officer from liability for injuries caused by negligently released individual. 5 A.L.R.4th 773.

Governmental tort liability for failure to provide police protection to specifically threatened crime victim. 46 A.L.R.4th 948.

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 362–364 et seq.

47 Am. Jur. Trials 411, Handling Fidelity Bond Claims.

CJS.

67 C.J.S., Officers §§ 247-258.

§ 25-1-47. Defense of public employees and satisfaction of judgment.

(1) Any municipality of the State of Mississippi is hereby authorized and empowered, within the discretion of its governing authorities, to investigate and provide legal counsel for the defense of any claim, demand, or action, whether civil or criminal, made or brought against any state, county, school district, or municipal officer, agent, servant, employee, or appointee as a result of his actions while acting in the capacity of such officer, agent, servant, employee, or appointee; and such municipality is hereby authorized to pay for all costs and expenses incident to such investigation and defense.

(2) Any municipality of this state is hereby authorized and empowered, within the discretion of its governing authorities, to pay and satisfy any negotiated settlement of a claim or any judgment, fine, or penalty which may be made, assessed, or levied by any court against any municipal agent, officer, servant, employee, or appointee as a result of any actions of such municipal agent, officer, servant, employee, or appointee while acting as such.

HISTORY:

Codes, 1942, § 4049.5; Laws, 1962, 1st Ex Sess ch. 5, §§ 1-3; Laws, 1971, ch. 447, § 1, eff from and after passage (approved March 25, 1971).

Cross References —

Purchase by municipalities of errors and omissions insurance for municipal officials, see § 21-15-6.

Penalty for member of State Tax Commission failing to account for and pay over collections, see § 27-3-45.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

Members of a county board of supervisors are empowered to employ counsel and defend themselves when sued in causes arising out of their official position where they have a colorable defense and present the defense in good faith; however, where there is no reasonable basis for a defense and/or where the board members proceed in bad faith, they act ultra vires and have no power to expend public funds for defense, and, in such cases, the court should order that any such defense be at their own expense and that any public funds expended be reimbursed. Richardson v. Canton Farm Equipment, Inc., 608 So. 2d 1240, 1992 Miss. LEXIS 596 (Miss. 1992).

2. Illustrative cases.

In an election contest filed by a mayor's opponent, the fact that no city officials were named as defendants did not bar the city council from hiring counsel because city officials' violations of election laws were alleged. McAdams v. Perkins, 204 So. 3d 1257, 2016 Miss. LEXIS 506 (Miss. 2016).

Sheriff was not entitled to reimbursement for legal fees incurred by him as a party in a federal lawsuit by employees seeking overtime pay because the statutes allowing the payment of fees were discretionary and did not require that counsel be provided to all employees with a colorable defense who acted in good faith. Madison County v. Hopkins, 857 So. 2d 43, 2003 Miss. LEXIS 577 (Miss. 2003).

Chancellor erred in ordering a county to pay part of the attorney's fees a sheriff incurred in federal court litigation, on grounds that a conflict of interest entitled the sheriff to separate representation, as (1) the federal district court had ruled that there was no conflict of interest in the same attorney representing the sheriff in his official capacity and suing him in his individual capacity; and (2) Miss. Code Ann. § 25-1-47 and Miss. Code Ann. § 19-3-47 permitted, but did not require, the county to provide the sheriff legal counsel in the federal action. Madison County v. Hopkins, 857 So. 2d 43, 2003 Miss. LEXIS 299 (Miss. 2003).

OPINIONS OF THE ATTORNEY GENERAL

Although statute uses word "municipality," term has consistently been construed to include counties; statute does authorize county board of supervisors discretion to settle claims for construction of new well. 1990 Miss. Op. Att'y Gen. 80.

Statute would authorize school district, in its discretion, to pay and satisfy claim of parents whose minor child received injuries while playing on swing set on school playground. 1990 Miss. Op. Att'y Gen. 638.

County may settle claim against county employee for actions taken in his or her capacity as employee. 1990 Miss. Op. Att'y Gen. 664.

If board of supervisors finds that legal action concerns actions taken by zoning commission's attorney, while acting in official capacity as attorney for commission, then board has discretion to pay for attorney's legal defense. 1991 Miss. Op. Att'y Gen. 171.

A municipal authority may not provide legal counsel for an alderman when the lawsuit brought against the alderman was an election contest and not a lawsuit making a claim as a result of the alderman's official actions. 1991 Miss. Op. Att'y Gen. 831.

County has discretionary authority to settle claims for calves which escaped through fence damaged by county road crew. 1992 Miss. Op. Att'y Gen. 683.

Verdict for punitive damages against mayor may be paid by board of aldermen. 1992 Miss. Op. Att'y Gen. 697.

County board of supervisors may employ legal counsel for defense of any civil or criminal claim or action brought against any member or members of board as result of their actions while acting in official capacity. 1992 Miss. Op. Att'y Gen. 968.

Attorney for state mental healthcare facility can provide legal representation for employee in tort and criminal actions if Board grants official advance approval of such representation. 1992 Miss. Op. Att'y Gen. 944.

If governing authorities of city find, consistent with fact and subject to judicial review, that where civil action arose out of actions of mayor, chief of police and director of public works, while acting in capacity of their offices or positions, then municipal governing authorities may, under Miss. Code Section 25-1-47(1), in their discretion, hire additional attorneys to defend mayor, chief of police and director of public works; fact that city participates in municipal association liability plan does not prohibit city from hiring additional counsel pursuant to above statute to defend mayor, chief of police and director of public works. 1993 Miss. Op. Att'y Gen. 46.

Miss. Code Section 25-1-47 authorizes and empowers county within discretion of board of supervisors to provide legal counsel for defense of any claim or action, and to settle any claim or pay any judgment against any officer or employee of county sued for actions done during course of employment; this is discretionary and not mandatory. 1993 Miss. Op. Att'y Gen. 295.

Word "municipality" in Section 25-1-47 includes public entities of every kind in State, and includes county board of supervisors. 1994 Miss. Op. Att'y Gen. 969.

Board of Supervisors must exercise sound discretion in deciding whether settlement of claim and expenditure of public funds for civil penalty for EPA violations is in best interest of public and must determine that settlement is based upon lawful claim against county. 1994 Miss. Op. Att'y Gen. 969.

While municipality is prohibited from providing free water service to an individual, municipal governing authorities, upon a proper finding of fact that citizen was overcharged for his water service, would be authorized to allow appropriate credit toward the payment of future water bills as settlement of claim pursuant to Section 25-1-47(2). 1994 Miss. Op. Att'y Gen. 111.

Section 25-1-47 does not authorize use of public funds for defense of public officers or employees in actions brought against them by the state to collect public funds misappropriated or otherwise illegally applied or withheld by said officers or employees. 1995 Miss. Op. Att'y Gen. 151.

If a service provider presents a claim to the Board of Education, the board may resort to Section 25-1-47 and settle the claim upon a finding in the minutes that the service was needed, the service was rendered and the cost for same is just, reasonable and equitable. 1995 Miss. Op. Att'y Gen. 234.

Federal Wage and Hours Laws will take precedent over any conflicting state laws or local ordinances, or orders entered by the board of supervisors. The county may settle such a claim. See Section 19-3-40. 1996 Miss. Op. Att'y Gen. 228.

When a board of supervisors is of the opinion that an elected official's refusal to respond to requests made under the Public Records Act is in violation of the Act, as well as the stated policy of the Board with regard to providing such records, the board may but is not required under Section 25-1-47, to provide legal counsel to this elected official to defend litigation filed to secure such records. 1996 Miss. Op. Att'y Gen. 663.

Pursuant to Section 25-1-47(2) if a church presents to the board a legitimate, pending claim against officers, agents or employees of the school board, then at the discretion of the school board, the board may negotiate a settlement which includes a conveyance of title to the property authorized by resolution entered on the minutes. Such resolution should recite all the findings of the board, including the bona fide claim made, all the factors considered by the board, that the property is of no value and no use to the district, and that settlement is advantageous to the school district and necessary to avoid the expenses of litigation and any possibility of liability. 1996 Miss. Op. Att'y Gen. 729.

If the county does not choose to provide a bond for the medical examiner, and the medical examiner is sued in her official capacity, the county would be obligated to provide legal counsel. See Sections 25-1-47 and 11-46-1, et seq. 1996 Miss. Op. Att'y Gen. 835.

Although this section authorizes a county to provide legal counsel for the defense of any claim against an officer or employee of the county while acting in his official capacity, the governing authorities of the county must first grant advance approval of such representation. 1997 Miss. Op. Att'y Gen. 671.

Overtime compensation claims ordered by the federal Department of Labor are claims against municipalities that can be deducted by the George County Board of Supervisors from the allocated budget of the office of Tax Assessor and Collector whose employees did not accept the county's compensatory time policy. 1998 Miss. Op. Att'y Gen. 161.

If an inmate sues the county board of supervisors and the sheriff, and the trial occurs two years later out of county where overnight stay becomes a necessity, the county may reimburse the sheriff and supervisors for out of pocket expenses for the hotel, meals, and mileage, even if some of these elected officials are no longer holding public office at the time of the trial. 1998 Miss. Op. Att'y Gen. 679.

An agency should authorize reimbursement of funds for defense of a criminal complaint only at such time that the criminal charges are successfully rebuffed by the employee. 1998 Miss. Op. Att'y Gen. 670.

If a county board of supervisors finds, consistent with fact and spread upon the minutes, that, in driving without the proper license, a county employee was acting in his official capacity and within the scope of his employment, then the board of supervisors may reimburse the employees for assessed fines. 1999 Miss. Op. Att'y Gen. 181.

Where an "insurance" pool paid an amount to the claimant, and the claimant accepted that payment, and executed a release or waiver in favor of the city, once such a settlement was accepted, the claimant was barred from making any additional claim for damages. To preserve the right to pursue the full amount claimed, the claimant should have refused the settlement tendered by the pool. Thus, as there remains no further legal obligation, the city cannot now supplement the amount accepted by the claimant from the insurance pool in settlement of the claim. 2004 Miss. Op. Att'y Gen. 251.

Subject to the appropriate findings, the county board of supervisors had the authority to provide defense counsel for individual public defender attorneys in an action arising from complaints against the public defender system used by the county. 2004 Miss. Op. Att'y Gen. 386.

Upon a finding of a school board that the actions complained of in a lawsuit filed against the superintendent arise out of and in the course of her performance of the duties of superintendent of a school district, this section permits the school board to incur expenses related to the defense of those claims. 2004 Miss. Op. Att'y Gen. 631.

A county may enter private land and remove tree stumps and debris as part of a settlement with the landowner. 2006 Miss. Op. Att'y Gen. 23.

Section 25-1-47 does not authorize the use of public funds for the defense of public officers or employees in cases brought against them by the state to collect public funds misappropriated or otherwise illegally applied or withheld by said officers or employees. 2006 Miss. Op. Att'y Gen. 174.

RESEARCH REFERENCES

ALR.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 A.L.R.4th 722.

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 370- 373.

CJS.

67 C.J.S., Officers §§ 355–359, 437 et seq.

§ 25-1-49. Seller may recover claim unlawfully brought by an officer.

If any county officer or his deputy shall unlawfully purchase or become interested in any certificate or claim of any kind payable out of the county treasury or in any witness certificate issued in a civil case, the person selling any such claim or certificate may recover the face value thereof of such officer on his official bond; and he shall not be required to account for what he received when he sold.

HISTORY:

Codes, 1880, §§ 1825, 2759; 1892, § 3068; 1906, § 3476; Hemingway's 1917, § 2814; 1930, § 2904; 1942, § 4050.

Cross References —

Penalty for member of State Tax Commission failing to account for and pay over collections, see § 27-3-45.

§ 25-1-51. Confiscated property: prohibited acquisition; disposition by sheriff; subsequent recovery.

(1) No law enforcement officer, conservation officer, or other person charged with the duty and responsibility of enforcing the statutory laws of this state or any municipality herein, whether employed full time or part time in such capacity, or any member of his or her household can knowingly own, acquire, bid upon, or otherwise participate as a purchaser or prospective purchaser, either directly or indirectly, at a sale concerning any real, personal, or mixed property which has been confiscated and is being sold, or has been sold, or is subject to being sold pursuant to the laws and statutes of this state. All officers seizing any property shall turn the same over to the sheriff of the county in which said property was seized. All real, personal, or mixed properties confiscated under authority of law and subject to sale as contraband properties shall be sold by the sheriff of the county in which said property was confiscated or is stored, after the sheriff shall first have given public notice by publication for not less than one (1) week in a newspaper published in said county or, if no newspaper is published in said county, said notice shall be published not less than one (1) time in a newspaper having general circulation in said county. The published notice shall contain a description of the property and other pertinent data which the sheriff may deem necessary and proper in compliance with this section. The cost of public notice shall be charged against and added to the cost of the property advertised and sold by virtue of said

notice. The net proceeds of all such property sold shall be deposited in the county general fund within the manner provided by law. The sheriff shall keep a public record of all property seized, the disposition thereof, and the proceeds from the sale thereof.

(2) The failure of the sheriff to sell any property seized by him or turned over to him within ninety (90) days and any violation of the above paragraph by such prohibited person, or any other person acting for or in behalf of such prohibited person, shall be deemed to be a misdemeanor and shall be punishable by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), which fine shall be subject to collection from such prohibited person's bondsmen if such prohibited person be under bond and fails to pay said assessed fine when it shall have become final and collectible.

In addition thereto, upon a showing in an action begun not later than one (1) year from the date of the legal sale of the confiscated property that such prohibited person has knowingly acquired title to such confiscated property in violation of paragraph (1) hereof, the owner of such property at the time it was confiscated, or his or her heirs, legatees, administrator, or executor shall be immediately entitled to the return of such property; and the sum paid therefor by such prohibited person, or in his or her behalf, shall be forfeited. The sum so forfeited shall be applied in the same manner as it would be applied had the confiscated property been sold to or acquired by other than such prohibited person.

HISTORY:

Codes, 1942, § 4050.5; Laws, 1962, ch. 614, §§ 1, 2; Laws, 2000, ch. 516, § 2, eff from and after passage (approved Apr. 30, 2000.).

Cross References —

Penalty for constable or other officer failing to execute process or return execution, see § 19-19-9.

Penalty for constable or other officer failing to pay money received on execution, see § 19-19-11.

Liability of sheriff, coroner, or other officer for failure to pay over money collected, see § 19-25-45.

Duties generally of marshals and chiefs of police, see § 21-21-1.

Disposition of confiscated property used in illegal hunting or fishing, see § 49-7-103.

Bidding for forfeited beverages and property under alcoholic beverages control law, see § 67-1-97.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

16A Am. Jur. Legal Forms 2d, Sheriffs, Police and Constables, § 232:7, (transfer of custody of goods, process, and prisoners by former sheriff to successor).

CJS.

80 C.J.S., Sheriffs and Constables §§ 459, 460.

§ 25-1-53. Nepotism prohibited.

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer. This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees; and this section shall not apply to any person seeking appointment as an election worker who has served as an election worker in the election immediately preceding the commencement of a term of office as an election commissioner by his kinsman within the third degree. The provision herein contained shall not apply in the instance of the employment of physicians, nurses or medical technicians by governing boards of charity hospitals or other public hospitals.

HISTORY:

Codes, 1930, § 2905; 1942, § 4051; Laws, 1926, ch. 170; Laws, 1975, ch. 333; Laws, 1994, ch. 627, § 1, eff from and after passage (approved April 8, 1994).

Cross References —

Prohibition against nepotism in appointment of banking examiners, see § 81-1-65.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Standing.

1. In general.

The statute which governs nepotism, § 25-1-53, did not pre-empt the application of § 25-4-105 to a situation in which the president of a community college employed his wife as a teacher since the former statute does apply to the employment of teachers. Hinds Community College Dist. v. Muse, 725 So. 2d 207, 1998 Miss. LEXIS 610 (Miss. 1998).

A position in a town maintenance department was not within the ambit of the statute. Shelton v. Town of Hickory Flat, 724 So. 2d 1075, 1998 Miss. App. LEXIS 1007 (Miss. Ct. App. 1998).

Insurance commissioner's appointment of disqualified person as deputy fire marshal would constitute "misfeasance" hence, Attorney General, not Auditor, was proper party to sue commissioner to recover payments to disqualified person. White v. Lowry, 162 Miss. 751, 139 So. 874, 1932 Miss. LEXIS 164 (Miss. 1932).

2. Standing.

A terminated town employee did not have standing to sue the board of aldermen for a violation of the section as he was not a member of the class of prospective employees for the appointive position in the town maintenance department. Shelton v. Town of Hickory Flat, 724 So. 2d 1075, 1998 Miss. App. LEXIS 1007 (Miss. Ct. App. 1998).

OPINIONS OF THE ATTORNEY GENERAL

Facts showed that husband was not appointing authority at time his wife was hired and simultaneous employment of husband and wife by city did not constitute nepotism; except for purposes of inquiring or receiving information or advice, council deals with municipal departments and personnel solely through mayor. 1990 Miss. Op. Att'y Gen. 51.

Position of road hand/machine operator/heavy equipment operator/road maintenance individual does not fall within class of employment enumerated or contemplated by statute (officer, clerk, stenographer, deputy or assistant); accordingly, employment of brother of member of board of supervisors would not constitute violation of nepotism statute. 1990 Miss. Op. Att'y Gen. 94.

Where Board of Trustees of State Institutions of Higher Learning and institutional executive officer is hiring authority for positions at institution, violation of nepotism statute did not occur since employees in question were related within third degree to individuals other than members of Board of Trustees or executive officer. 1990 Miss. Op. Att'y Gen. 111.

Kinship by marriage ends upon dissolution of marriage by divorce or death; former sister-in-law of board member, if otherwise qualified, may be lawfully appointed to serve as municipal clerk. 1990 Miss. Op. Att'y Gen. 405.

Since hospital administrator/husband is not "appointing authority", arrangement to hire wife of hospital administrator as employee of hospital will not violate nepotism statute. 1990 Miss. Op. Att'y Gen. 415.

Appointed municipal clerk is subject to same employment provisions as are regular municipal employees and therefore, insofar as nepotism statute is concerned would be in same situation as "employee" and is eligible to remain in office subsequent to time her kinsman was elected to board of aldermen. 1990 Miss. Op. Att'y Gen. 627.

Hiring of sister of member of board of supervisors by tax assessor and collector to be deputy assessor would not violate nepotism statute; Since tax assessor and collector is hiring authority, not board of supervisors, employee would not be related to hiring authority within third degree according to civil law. 1990 Miss. Op. Att'y Gen. 651.

Where sole authority for employment and discharge of employees expressly rests with commission, not executive director, commission may not hire as clerk, stenographer, officer, deputy or assistant, son or daughter of one of members of Board of Commissioners of Mississippi Coast Transportation Authority. 1990 Miss. Op. Att'y Gen. 784.

Three-part analysis should be employed to determine whether employment relationship violates nepotism statute: (1) Are parties related within third degree? (2) Is relative who is public official "appointing authority"? (3) Is job included in list of prohibited positions? 1991 Miss. Op. Att'y Gen. 404.

Whether employee is hired for summer only or permanently is irrelevant to question of whether employment violates nepotism statute. 1991 Miss. Op. Att'y Gen. 404.

The mayor and board of aldermen may hire the son of an aldermen as a ground man, meter reader or for any position in the utility department which is not an officer, clerk, stenographer, deputy or assistant. 1991 Miss. Op. Att'y Gen. 817.

A Board of Aldermen is not prohibited from hiring the son-in-law of an Alderman as the attorney for the Board. 1991 Miss. Op. Att'y Gen. 955.

Coroner/county medical examiner investigator cannot appoint his son as deputy county medical examiner investigator. 1992 Miss. Op. Att'y Gen. 77.

Pursuant to the nepotism statute, a board of supervisors is prohibited from compensating the son of a county medical examiner investigator for his services as deputy county medical examiner investigator. 1992 Miss. Op. Att'y Gen. 423.

As a deputy who is to be paid out of the public funds, a deputy medical examiner or medical examiner investigator is subject to the nepotism statute, regardless of whether he actually receives the compensation to which he is entitled. 1992 Miss. Op. Att'y Gen. 423.

Because the sheriff, not the board of supervisors, is responsible for the actual employment of deputies, the employment by a sheriff of a deputy who is the son of a supervisor does not present a violation of the nepotism statute. 1992 Miss. Op. Att'y Gen. 433.

Nepotism statute prohibits city council from appointing to Municipal Elections Commission uncle by marriage of one of council members. 1992 Miss. Op. Att'y Gen. 677.

Nepotism statute prohibits city board of aldermen from appointing sister-in-law of alderman to city's Election Commission. 1992 Miss. Op. Att'y Gen. 684.

There is no apparent prohibition against deputy circuit clerk's daughter-in-law serving as county election commissioner. 1992 Miss. Op. Att'y Gen. 659.

Miss. Code Section 25-1-53, Mississippi's nepotism statute, prohibits hiring of person who is related by blood or marriage within third degree to hiring authority; this statute does not apply to person who is already in position before relative became hiring authority. 1993 Miss. Op. Att'y Gen. 983.

Attorney General's office has consistently construed Miss. Code Section 25-1-53 strictly. 1993 Miss. Op. Att'y Gen. 271.

Consistent with strict interpretation of Miss. Code Section 25-1-53, dispatcher is not "officer, clerk, stenographer, deputy, or assistant" such as is contemplated by nepotism statute; accordingly, Miss. Code § 25-1-53 does not prohibit board of supervisors from employing sister-in-law of one of board's members as dispatcher. 1993 Miss. Op. Att'y Gen. 271.

Mississippi's nepotism statute, Miss. Code Section 25-1-53, does not apply to employment of physicians, nurses or medical technicians by governing boards of community hospitals; however, statute does apply to employment of officers, clerks, stenographers, deputies or assistants; statute does not apply to employee who was in department or institution before kinsman became hiring authority. 1993 Miss. Op. Att'y Gen. 274.

Police officer who is not chief of police does not fall under nepotism statute and therefore board of aldermen could hire father and brother-in-law of one of members of board of aldermen as police officers. 1993 Miss. Op. Att'y Gen. 420.

Board of supervisors is ultimately appointing authority of assistant purchasing clerk in all counties, regardless of whether they operate under beat system or unit system and therefore county administrator was prohibited from appointing nephew of county supervisor as assistant purchasing clerk. 1993 Miss. Op. Att'y Gen. 482.

Administrator who implements federal law such as Americans with Disabilities Act is not one of five listed positions in statute and therefore board of supervisors or county administrator could appoint nephew of board member as administrator in county charged with responsibility of implementing Americans with Disabilities Act. 1993 Miss. Op. Att'y Gen. 482.

Because mayor is appointing authority and city council has no confirmation authority, there would be no violation of nepotism statute for husband of council member to serve as public defender. 1993 Miss. Op. Att'y Gen. 494.

Nepotism only applies to specific jobs mentioned in statute, namely "officer, clerk, stenographer, deputy or assistant"; therefore, it would not appear that employment by mayor and aldermen of mayor's nephew as "staffing specialist" comes within prohibition of statute. 1993 Miss. Op. Att'y Gen. 583.

In determining whether nepotism statute applies, it is necessary to apply three-part analysis: (1) are parties related within third degree; (2) is relative who is public official appointing authority; (3) is position one of five enunciated positions in statute. 1993 Miss. Op. Att'y Gen. 613.

There does not appear to be prohibition against board of aldermen employing son of alderman as laborer, as that is not one of five specified positions in nepotism statute; however, as niece is within third degree of kinship prohibited by statute, and clerk is one of enunciated positions set out in nepotism statute, it would be in violation of Section 25-1-53 for niece of alderman to be employed in that capacity unless she was serving as city clerk at time her uncle or aunt became alderman. 1993 Miss. Op. Att'y Gen. 613.

Board of aldermen of municipality may retain attorney who is brother to one of members of board. 1993 Miss. Op. Att'y Gen. 545.

Nepotism statute does not apply to position of municipal judge; therefore, Board of Aldermen may appoint municipal judge who is brother of alderman. 1993 Miss. Op. Att'y Gen. 545.

Nepotism statute does not apply to position of department head of municipality; therefore, Board of Aldermen may appoint as department head person who is brother-in-law of alderman, i.e., person whose wife's sister is married to alderman. 1993 Miss. Op. Att'y Gen. 545.

Nepotism statute does not prohibit sheriff from appointing sister-in-law as dispatcher and/or jailer if she will not be deputy sheriff but it does prohibit her appointment as deputy sheriff. 1993 Miss. Op. Att'y Gen. 554.

Nepotism statute does not prohibit Mayor and Board of Aldermen from hiring brother-in-law of alderman as Director of Parks and Recreation. 1993 Miss. Op. Att'y Gen. 725.

Person may be employed as Director of Transition Program at Chemical Dependency Unit of which her husband is Director since position of "director" is not one of prohibited classes of employment listed in statute. 1993 Miss. Op. Att'y Gen. 944.

There was no prohibition against municipal governing authorities employing stepson of alderman as certified operator over Clean and Wastewater Department since this was not a position covered by nepotism statute. 1994 Miss. Op. Att'y Gen. 106.

The employment of the son-in-law of the mayor of a "code charter" municipality as a law enforcement officer does not violate the provisions Section 25-1-53 (the nepotism statute). 1995 Miss. Op. Att'y Gen. 180.

Section 25-1-53 makes it unlawful to appoint a relative as an assistant who is to be paid out of the public funds. However, the appointment of an unpaid volunteer does not violate this section. 1995 Miss. Op. Att'y Gen. 360.

Section 25-1-53 would not prohibit employment of persons not related by blood or marriage within the third degree. 1995 Miss. Op. Att'y Gen. 288.

Under Section 25-1-53, an ex-wife is not related by blood or marriage to a judge. Therefore, the nepotism statute does not prohibit a judge from hiring an ex-wife for the position of Secretary III. 1995 Miss. Op. Att'y Gen. 583.

Section 25-1-53 only applies to those positions specifically listed in the statute, therefore a supervisor may hire his brother-in-law as a road hand. 1995 Miss. Op. Att'y Gen. 841.

If a person was recently elected to serve as County Supervisor and the Supervisor's son has been an employee of the district for six years prior to the election, it would appear to be acceptable for the son to continue to work in his present position under Section 25-1-53. 1996 Miss. Op. Att'y Gen. 27.

The County Board of Supervisors may employ the brother-in-law of one of its members as a full time mechanic to service and/or repair all county vehicles and equipment since, Section 25-1-53 only prohibits an official from employing or appointing a relative within the third degree to the following positions: "officer, clerk, stenographer, deputy, or assistant". 1996 Miss. Op. Att'y Gen. 126.

Pursuant to Section 25-1-53 the brother-in-law of the alderman may not be employed as an officer, clerk, stenographer, deputy or assistant since he is related by marriage within the third degree to the alderman. A city is not prohibited from hiring the alderman's brother-in-law in some other capacity or position. 1996 Miss. Op. Att'y Gen. 476.

Pursuant to Section 25-1-53, a stepfather or stepniece would be related by marriage within the third degree. Therefore, such person could not serve as an officer, clerk, stenographer, deputy or assistant. 1996 Miss. Op. Att'y Gen. 619.

The hiring as a police officer of the first cousin of a police chief, considered to be related in the fourth degree, would not violate the nepotism statute. 1997 Miss. Op. Att'y Gen. 365.

The nepotism statute is violated if the son of a county medical examiner is appointed as a deputy county medical examiner even if the deputy agrees to serve without compensation. 1997 Miss. Op. Att'y Gen. 414.

An appointment of the brother of an alderman as the police chief of a municipality would violate the nepotism statute. 1997 Miss. Op. Att'y Gen. 439.

Miss. Code Section 25-1-53 would not restrict the employment of a public relations assistant, notwithstanding the fact that the assistant is related within the third degree to a member of the appointing authority, because a public relations assistant is not one of the five positions to which Section 25-1-53 applies. 1997 Miss. Op. Att'y Gen. 440.

The nepotism statute is violated if a person is appointed to a public job by a public officer related to them within the third degree and they receive insurance benefits, the premiums for which are paid out of public funds. 1997 Miss. Op. Att'y Gen. 488.

Nepotism statute prohibiting a board of alderman from appointing a person who is related by blood or marriage within the third degree to a board member to one of five specific positions, that is, officer, clerk, stenographer, deputy or assistant, applies by its own terms to five positions only and, therefore, does not preclude the mayor and aldermen from appointing the mayor's brother as an operator/laborer in the water department. 1998 Miss. Op. Att'y Gen. 833.

A mayor who appoints his brother to a school board, which is an office of the executive government, will violate the Nepotism Statute unless the brother forgoes all compensation and payment. 1998 Miss. Op. Att'y Gen. 106.

The nepotism statute does not prohibit the sheriff from hiring a cousin of his wife as chief deputy. 1998 Miss. Op. Att'y Gen. 255.

The nepotism statute does not prohibit a board of supervisors from hiring a nephew of a member of the board as a laborer or light equipment operator. 1998 Miss. Op. Att'y Gen. 272.

The nepotism statute does not prohibit the president of a community college from hiring the daughter-in-law of a member of the board of trustees as a recruiter. 1998 Miss. Op. Att'y Gen. 305.

The nepotism statute does not prohibit a municipality from hiring the son of an alderman as a full time policeman who is not the chief. 1998 Miss. Op. Att'y Gen. 419.

The board of aldermen may hire the brother of an alderman as fire chief. 1998 Miss. Op. Att'y Gen. 514.

It would be a violation of the statute for a member of a governing authority empowered to vote for the appointment of a commissioner to be related to such appointee within the third degree. 1998 Miss. Op. Att'y Gen. 614.

There is no violation of the statute where the relative appointed to a position is to receive no payment or compensation to be paid from public funds. 1998 Miss. Op. Att'y Gen. 614.

The appointment of the son of a member of the Board of Commissioners of the City of Clarksdale to the Clarksdale Public Utilities Commission would violate the provisions of the nepotism statute, unless he were to agree to waive all compensation. 1998 Miss. Op. Att'y Gen. 751.

A stepdaughter is related by marriage within the third degree, and a city council may not appoint a stepdaughter of a council member as the city clerk. 1998 Miss. Op. Att'y Gen. 774.

The statute does not prohibit a board of aldermen from hiring the son of the mayor as a laborer who works with the gas system and the water and sewer systems. 1999 Miss. Op. Att'y Gen. 93.

The board of aldermen of a code charter municipality may appoint the nephew of the wife of the mayor to the position of Maintenance Manger and Utility Supervisor. 1999 Miss. Op. Att'y Gen. 285.

The mayor and aldermen of a city may appoint the son of the fire chief as a firefighter in the municipal fire department. 1999 Miss. Op. Att'y Gen. 456.

The statute prohibits a sheriff from hiring his sister-in-law to one of the five specifically listed positions; however, the statute does not prohibit a sheriff from hiring his sister-in-law to a position that is not specifically listed. 2000 Miss. Op. Att'y Gen. 704.

The appointment of the stepdaughter of an alderman to the position of secretary would be in violation of the statute. 2000 Miss. Op. Att'y Gen. 79.

A board of supervisors may terminate an employee for any reason, including violation of the nepotism statute, that is consistent with constitutional law; the action of the board should be simply to terminate a person whose employment violates the nepotism statute (unless, of course, the employee comes within the grandfather provisions of Section 25-1-53). 2000 Miss. Op. Att'y Gen. 152.

The statute does not prohibit the board of supervisors from hiring the son of a supervisor as an E-911 Coordinator, Emergency Management Coordinator, and Fire Coordinator of the county. 2000 Miss. Op. Att'y Gen. 233.

It would not constitute a violation of the statute for the superintendent to recommend his spouse for a position as a secretary with the same school district. 2000 Miss. Op. Att'y Gen. 216.

An applicant for a position in the accounting department is not prohibited from being employed by the county board of supervisors as long as the employee is not a purchasing clerk, receiving clerk, or inventory clerk. 2000 Miss. Op. Att'y Gen. 606.

A town may hire the brother-in-law and son-in-law of an alderman as regular police officers. 2000 Miss. Op. Att'y Gen. 631.

The statute does not prohibit the hiring of a mayor's cousin to serve in the position of town clerk. 2001 Miss. Op. Att'y Gen. 14.

The statute does not apply to computer support personnel and, therefore, did not prohibit a county board of supervisors from hiring two individuals as computer support personnel, one of whom was married to a county supervisor. 2001 Miss. Op. Att'y Gen. 127.

The sheriff, rather than the board of supervisors, is responsible for the actual employment of deputies and, therefore, the employment by a sheriff of a deputy who is the son of the predecessor sheriff and the son-in-law of a member of the board of supervisors does not present a violation of the statute. 2002 Miss. Op. Att'y Gen. 16.

Employment by the sheriff of an auxiliary deputy sheriff who is the son of a member of the board of supervisors does not violate the statute. 2002 Miss. Op. Att'y Gen. 17.

The governing authorities of a town are not prohibited from hiring the son of an alderman as a police officer who is not the chief. 2002 Miss. Op. Att'y Gen. 126.

One sister of a county tax collector could retain her job in the tax collector's office after the county tax collector retired, even if another sister of the county tax collector was elected to that position; however, she could not be subsequently transferred or promoted to another prohibited position if the other sister became the tax collector. 2002 Miss. Op. Att'y Gen. 229.

A district attorney may hire his nephew to work in his office as a domestic violence investigator. 2002 Miss. Op. Att'y Gen. 333.

A person in an employing or appointing authority may not hire his or her niece as an officer, clerk, stenographer, deputy or assistant if the niece is to be paid out of public funds. 2002 Miss. Op. Att'y Gen. 739.

Employment of the brother of a member of the board of trustees of a regional medical center as a security guard does not violate the nepotism statute. 2002 Miss. Op. Att'y Gen. 545.

In a situation in which an employee and appointing authority are not related when the employment relationship begins, but become related through marriage afterwards, the statute prohibiting nepotism is not applicable. 2002 Miss. Op. Att'y Gen. 580.

The nepotism statute prohibits the governing authorities of a city from reappointing the brother-in-law of the newly elected mayor to a new term as a commissioner of the housing authority. 2003 Miss. Op. Att'y Gen. 759.

Section 25-1-53 would not bar the father from continued employment by the board of supervisors if his son is subsequently elected to the position of supervisor. 2003 Miss. Op. Att'y Gen. 23.

Hiring of the spouse of the Chief Engineer of the Mississippi Department of Transportation as an engineer in the Office of State Aid Road construction does not create a violation of the nepotism statute. 2003 Miss. Op. Att'y Gen. 52.

The board of aldermen of a town may hire the grandson-in-law of the mayor as the municipal attorney. 2003 Miss. Op. Att'y Gen. 19.

There would be no violation of the nepotism statute if the brother-in-law of the mayor appointed as a commissioner of the Housing Authority waives all salary, compensation and expenses. 2003 Miss. Op. Att'y Gen. 40.

An individual appointed to serve on the board of a municipal separate school district pursuant to Section 37-7-203 is considered an officer of the municipality, and the nepotism statute prohibits the hiring of an individual related within the third degree to a member of the appointing authority to one of five specific positions including "officer." 2003 Miss. Op. Att'y Gen. 167.

It is the act of appointment of a disqualified person that is the violation of the nepotism statute. 2003 Miss. Op. Att'y Gen. 167.

Section 25-1-55 renders the appointing authority liable for all amounts paid to a person appointed in violation of the nepotism statute. 2003 Miss. Op. Att'y Gen. 167.

Since it is the board of supervisors that hires the deputy justice court clerks and not the justice court judges, there is no prohibition to a county hiring the daughter-in-law of a justice court judge to be a deputy justice court clerk. Fortier and 2003 Miss. Op. Att'y Gen. 216.

It would violate the nepotism statute for an individual to be appointed to a county development commission by a county board of supervisors whose membership includes the individual's step-uncle. 2003 Miss. Op. Att'y Gen. 340.

County tax collector's employment of her husband as a part time mobile home inspector would violate the nepotism statute. 2003 Miss. Op. Att'y Gen. 379.

The nepotism statute applies to a recreation authority created by an interlocal cooperation agreement between a city and county. 2003 Miss. Op. Att'y Gen. 382.

A board of aldermen is prohibited by the nepotism statute from appointing a sister of a board member as the city clerk of a code charter municipality. 2003 Miss. Op. Att'y Gen. 416.

A board of aldermen is not prohibited by the nepotism statute from appointing the niece of the city marshall as the city clerk of a code charter municipality. 2003 Miss. Op. Att'y Gen. 416.

A violation of the nepotism statute would occur if the individual currently serving as deputy clerk were promoted to the position of city clerk while her sister is a member of the board of aldermen, and this would be so regardless of whether the sister recuses herself from any votes on the question. 2003 Miss. Op. Att'y Gen. 469.

The appointment of the nephew of a member of the City Council to the position of airport director does not violate the nepotism statute. 2004 Miss. Op. Att'y Gen. 21.

The appointment of the husband of an Alderman's niece to the position of school board trustee would violate the nepotism statute. Should the school board member agree to serve without compensation, the violation would be avoided. 2004 Miss. Op. Att'y Gen. 22.

The appointment of an individual whose spouse is a nurse at a county nursing home would not result in a violation of this section. 2004 Miss. Op. Att'y Gen. 71.

There is no conflict between this section and § 25-4-105. The prohibitions contained therein are cumulative and individuals must comply with both statutes. 2004 Miss. Op. Att'y Gen. 71.

For purposes of the nepotism statute, the circuit clerk is the is the appointing authority of a deputy who is being paid by the board of supervisors. 2004 Miss. Op. Att'y Gen. 413.

County hospital's hiring as a receptionist an individual whose husband is the grandson of a hospital trustee would not violate the nepotism statute. 2005 Miss. Op. Att'y Gen. 364.

In order to avoid a violation of the nepotism statute, a school board member must not only waive the per diem, but must also waive reimbursement for expenses and travel which is otherwise available to members for travel to board meetings and any training sessions or regional or national education meetings. 2005 Miss. Op. Att'y Gen. 427.

A school board member who has waived compensation in order to avoid a violation of the nepotism statute is in no position to designate the distribution of those funds or to donate those funds to any organization. 2005 Miss. Op. Att'y Gen. 427.

The hiring of a sister of a member of the board of supervisors by the sheriff would not violate Section 25-1-53. 2005 Miss. Op. Att'y Gen. 614.

A judge may not lawfully appoint his or her brother to the position of court administrator. 2006 Miss. Op. Att'y Gen. 64.

There is no violation of the nepotism statute if the board of aldermen employs the mayor's son as the town's water operator or wastewater operator. 2006 Miss. Op. Att'y Gen. 294.

A coroner may not appoint his brother as a deputy coroner. 2006 Miss. Op. Att'y Gen. 345.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. 2007 Miss. Op. Att'y Gen. 130, 2007 Miss. AG LEXIS 103.

Subject to the Mississippi Nepotism Statute, Miss. Code Ann. § 25-1-53, an individual may not be subsequently transferred or promoted to another prohibited position after a relative within the third degree becomes the hiring authority. 2007 Miss. Op. Att'y Gen. 129, 2007 Miss. AG LEXIS 96.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees § 99.

CJS.
67 C.J.S., Officers § 31, 32.

§ 25-1-55. Penalty for nepotism.

Any person violating the provisions of Section 25-1-53 shall forfeit to the State of Mississippi, and shall be liable on his official bond for, an amount equal to the sum of all moneys paid to any person appointed or employed in violation of the provisions aforesaid.

HISTORY:
Codes, 1930, § 2906; 1942, § 4052; Laws, 1926, ch. 170.

JUDICIAL DECISIONS

1. In general.
Insurance commissioner's appointment of disqualified person as deputy fire marshal would constitute "misfeasance;" hence, Attorney-General, not Auditor, was proper party to sue commissioner to recover payments to disqualified person. White v. Lowry, 162 Miss. 751, 139 So. 874, 1932 Miss. LEXIS 164 (Miss. 1932).

§ 25-1-57. Undated or postdated resignations.

Whenever any appointment or employment of an officer or employee of the State of Mississippi or any agency, department, or institution thereof, shall by law require confirmation by the Mississippi State Senate, no officer or employee of the state, or any other person, shall take, require, accept, or otherwise obtain as a condition of appointment or employment an undated or postdated resignation from a person to be appointed as an officer or employee of the state or any agency, department, or institution thereof. Any such resignation accepted, taken, or obtained contrary to the provisions hereof shall be null and void and of no effect, unless the Mississippi State Senate shall have been advised of the existence and content of any undated or postdated resignation and consented thereto at the time of its confirmation of the appointment or employment.

HISTORY:
Codes, 1942, § 4052.5; Laws, 1960, ch. 385.

Cross References —
Quo warranto to test right to office, see § 11-39-5.

Removal of public officers from office, generally, see § 25-5-1.

Resignation of officer in order to evade obedience to lawful order of superior, see § 97-11-39.

§ 25-1-59. Vacancy by removal or default.

If any state, district, county, county district, or municipal officer during the term of his office shall remove out of the state, district, county, or municipality for which he was elected or appointed, such office shall thereby become vacant and the vacancy be supplied as by law directed. If any person who has been or shall be a collector or holder of public money is elected to either branch of the Legislature or to any office of profit or trust, and shall not have accounted for and paid into the treasury all sums for which he may be accountable on or before the day of the meeting of the Legislature to which he shall be chosen or the time for the commencement of his term of office, the seat of such person in the Legislature or the office to which he was elected shall be forthwith vacated thereby.

HISTORY:

Codes, 1857, ch. 4, art. 25; 1871, § 393; 1880, § 153; 1892, § 3070; 1906, § 3478; Hemingway's 1917, § 2816; 1930, § 2908; 1942, § 4054.

Cross References —

Power of Governor to suspend defaulting officials, see Miss. Const. Art. 5, § 125.

Authority of Legislature to empower Governor to remove and appoint officers in counties or municipal corporations, see Miss. Const. Art. 5, § 139.

Powers of Governor to make appointments and fill vacancies, see § 7-1-5.

Procedure by which appointments are made by governor, see § 7-1-35.

Appointment of pro tempore court officers, see § 9-1-27.

Vacancy by removal of alderman or mayor, see § 21-3-11.

Suspension of tax collector for failure to report, see § 27-29-25.

JUDICIAL DECISIONS

1. In general.

Neither the circuit court nor the Supreme Court had the authority to consider a county supervisor's attempted appeal from an order of the board of supervisors finding that he had removed himself from his district and declaring his office vacant under the authority of § 25-1-59, where the supervisor filed a notice of appeal to the circuit court but failed to file a bill of exceptions as required by § 11-51-75. Moore v. Sanders, 569 So. 2d 1148, 1990 Miss. LEXIS 445 (Miss. 1990).

Successful candidate for county school superintendent having, subsequent to election, married a man who was not a resident of the State and having removed therefrom was not an "inhabitant" of State and was, therefore, disqualified to hold office. Weisinger v. McGehee, 160 Miss. 424, 134 So. 148, 1931 Miss. LEXIS 186 (Miss. 1931).

OPINIONS OF THE ATTORNEY GENERAL

By virtue of statute, alderman who removes himself from district (ward) from which he was elected by moving to new home in another ward, vacates his office. 1990 Miss. Op. Att'y Gen. 178.

If, as matter of fact, official in question has removed himself to another state, his office became vacant and he relinquished all rights to compensation as of date of said removal. 1990 Miss. Op. Att'y Gen. 707.

The Municipal Election Commission has the responsibility of making the factual determination as to whether a qualified elector has abandoned the municipality as his place of residence or whether he is only temporarily away from his residence. 1992 Miss. Op. Att'y Gen. 15.

A candidate for appellate judge must be resident of district for office being sought. 1993 Miss. Op. Att'y Gen. 572.

Member of municipal civil service commission who moves outside corporate limits of municipality he was appointed to serve vacates his office. 1993 Miss. Op. Att'y Gen. 848.

Justice court judges and candidates for the office of justice court judge must be lawful residents of the district they serve or seek to serve. 1995 Miss. Op. Att'y Gen. 60.

If a board of supervisors makes the determination that a justice court judge has, as a matter of fact, established his residence outside the district he was elected to serve, the vacancy would be filled in accordance with Section 25-1-59. If the vacancy occurs in the last year of a term, a person appointed to fill a vacancy in accordance with the above cited statute would serve the remainder of the term or until the first Monday in January, of the next year. 1995 Miss. Op. Att'y Gen. 60.

Upon a determination by the board of aldermen that one of its members has moved outside the corporate limits of the municipality he or she was elected to serve as opposed to temporarily living outside the municipality, the office becomes vacant by operation of law and the vacancy must be filled in accordance with the provisions of § 23-15-857. 2002 Miss. Op. Att'y Gen. 576.

The question of whether an official has "removed" out of the jurisdiction for which he was elected or appointed is one of fact. The municipal governing board has the responsibility to make the factual determination as to whether an officer has abandoned the municipality as his place of residence or whether he is only temporarily away from his residence. 2003 Miss. Op. Att'y Gen. 441.

Whether a municipal officer has "removed" out of the jurisdiction he was elected to serve is a question of fact to be determined by the municipal governing authorities, subject to judicial review. 2005 Miss. Op. Att'y Gen. 633.

If a board of aldermen determines, consistent with the facts, that a member is no longer a resident of the ward he was elected to serve and is not merely temporarily residing outside his ward but has abandoned same, a vacancy would have to be declared and a special election set in accordance with Section 23-15-857. 2006 Miss. Op. Att'y Gen. 377.

RESEARCH REFERENCES

ALR.

Assertion of immunity as ground for removing or discharging public officer or employee. 44 A.L.R.2d 789.

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 136 et seq.

CJS.

67 C.J.S., Officers §§ 154–186, 224 et seq.

§ 25-1-61. Legal residence of state officers.

All public officers of this state who are required to, or who for official reasons, remove from the county of their actual household and residence to another county of this state for the purpose of performing the duties of their office shall be deemed in law in all respects to be householders and residents of the county from which they so remove, unless such officer elects to become an actual householder and resident of the county to which he removed for official causes.

HISTORY:

Codes, 1930, § 2909; 1942, § 4055; Laws, 1926, ch. 175.

Cross References —

County residency requirement for member of house of representatives, see Miss. Const. Art. 4, § 41.

Residency requirements for judges, see § 9-1-23.

County in which action against public officer may be brought, see § 11-11-3.

Qualifications for offices of mayor and alderman, see § 21-3-9.

JUDICIAL DECISIONS

1. In general.

Claim by a candidate for county supervisor that as an employee of the State of Mississippi he was entitled to claim residency in the county was not supported by Miss. Code Ann. § 25-1-61 because the candidate was merely employed by the state and was not a state officer or official. Young v. Stevens, 968 So. 2d 1260, 2007 Miss. LEXIS 347 (Miss. 2007).

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Domicil § 38.

63A Am. Jur. 2d, Public Officers and Employees §§ 60-62.

CJS.

67 C.J.S., Officers § 35.

§ 25-1-63. Defaulting officers published.

If any state, state district, county, county district, or other public officer who is required by law to make any report to or settlement with another officer, or in any manner to account with such officer, shall fail to make the report or settlement or to account within ten (10) days after the date on which such report, settlement, or accounting should be made or had or within such reasonable extended time, not exceeding thirty (30) days, as such other officer in a proper case may allow, the fact of such default shall be published by the officer to or with whom the report, settlement, or accounting should be made or had in a newspaper published in the county of the defaulter's residence, if there be one so published willing to make the publication, and, if not, then in one published at the capital. If any officer to or with whom any such defaulter should report, settle, or account shall fail to make such publication within fifty (50) days after the date of the original default, any citizen who is not a surety of the defaulter may bring an action against the officer so failing to publish the defaulter, personally or on his bond, and shall recover all damages to such citizen and a penalty of Five Hundred Dollars ($500.00); and, to recover the penalty, it shall not be necessary to show any damages, provided that only one (1) penalty shall be recovered. Two Hundred and Fifty Dollars ($250.00) of the penalty, in the case of a state or state district officer, shall be paid into the state treasury, and in case of a county or county district officer, into the county treasury, and the other half to the person suing. It shall be the duty of the district attorney to bring all such suits.

HISTORY:
Codes, 1892, § 3071; 1906, § 3479; Hemingway's 1917, § 2817; 1930, § 2910; 1942, § 4056; Laws, 1916, ch. 226.

Cross References —
Suspension of State Treasurers and tax collectors in default, see § 7-1-57.

Reports of State Treasurer to Governor respecting public finances, see § 7-9-49.

Hearing in circuit court on motions against court officers for money collected and not paid over, see § 9-7-89.

Suspension of tax collector for default, see § 27-29-25.

JUDICIAL DECISIONS

1. In general.
Attorney general was not liable to contractor for work in repairing old Capitol for instituting suit at the request of two members of the capitol commission to enjoin the contractors from doing the work, whether or not the attorney general acted wilfully or maliciously. Semmes v. Collins, 120 Miss. 265, 82 So. 145, 1919 Miss. LEXIS 85 (Miss. 1919).

RESEARCH REFERENCES

ALR.
Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 25-1-65. Expense of publication.

The expense of publishing such defaulters shall be paid out of the county treasury on the allowance of the board of supervisors in the case of a county or county district officer, and in the case of a state or state district officer, out of the state treasury, as other contingent expenses are paid.

HISTORY:
Codes, 1892, § 3072; 1906, § 3480; Hemingway's 1917, § 2818; 1930, § 2911; 1942, § 4057.

§ 25-1-67. Public moneys to be promptly paid by legal representatives.

It is the duty of the legal representative of every tax collector or other officer who shall die having public money in his hands to promptly pay the same over to the proper authorities. Nothing herein contained shall in any manner vary or affect the liability of such officer or his bondsmen.

HISTORY:
Codes, 1892, § 3078; 1906, § 3486; Hemingway's 1917, § 2824; 1930, § 2912; 1942, § 4058.

Cross References —
Procedure when officer holding property under execution dies before sale is made, see § 13-3-177.

Seizure of property upon refusal of representative of deceased officer to deliver, see § 13-3-179.

Duty of executor or administrator to pay debts of estate generally, see § 91-7-155.

Penalty for conversion of public funds held in trust by public officer or personal representative, see § 97-11-25.

JUDICIAL DECISIONS

1. In general.
Interest on moneys deposited by the treasurer of a board of levee commissioners comes into his hands by virtue of his office and he and the sureties on his bond are liable therefor. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 341, 402, 420.

CJS.
67 C.J.S., Officers §§ 259-269.

§ 25-1-69. Officer not to carry or deposit public funds outside state.

It shall be unlawful for any officer of this state, or for any officer of any county or any levee board in this state, to deposit, carry, send, or to permit to be deposited, carried, or sent to any point beyond the confines of this state any part of any fund, money, bonds, or securities of any kind whatever belonging to the State of Mississippi, or to any county or subdivision of any county within this state, which may have come into his possession or custody by virtue of his office, unless paid out by due and legal authority. Any state or county officer violating the provisions of this section shall, upon conviction, be fined not less than Two Hundred Dollars ($200.00) and not more than One Thousand Dollars ($1,000.00), or be imprisoned in the state penitentiary for a term not exceeding five (5) years, or both, at the discretion of the court.

HISTORY:
Codes, 1906, § 3488; Hemingway's 1917, § 2826; 1930, § 2913; 1942, § 4059; Laws, 1904, ch. 107.

Cross References —
Remedy against officer failing to account for fines, penalties or forfeitures collected by him, see §§ 11-7-219, 99-19-67.

Penalty for loan or removal of state funds by public officer, see § 27-105-27.

JUDICIAL DECISIONS

1. In general.
Funds deposited by the sheriff of the county in his official account are public funds. Coahoma County v. Mississippi Fire Ins. Co., 68 F.2d 489, 1934 U.S. App. LEXIS 4886 (5th Cir. Miss. 1934).

OPINIONS OF THE ATTORNEY GENERAL

Electronic transfers to out-of-state banks for investment purposes are not prohibited by Section 25-1-69 so long as such funds are credited as being on deposit with a qualified county depository and are secured as provided by law. 1996 Miss. Op. Att'y Gen. 503.

§ 25-1-71. Public moneys are trust funds.

All money deposited in a bank or with any depository by or for a tax collector or other officer having the custody of public funds, state, county, municipal, levee board, road districts, drainage districts, or school districts, whether the same be deposited in the name of the officer as an individual or as an officer or in the name of any other person, is prima facie public money and a trust fund, and is not liable to be taken by the general creditors of the officer or by the creditors of the depository. Whenever any corporation doing a banking business of whose property and banking business the banking examiner has taken possession as provided by law, it shall be the duty of such banking examiner, or his agent in charge, out of the first money coming into his hands to immediately pay to the tax collector or other officer having the custody of such funds the full amount thereof, as far as possible. On failure so to do, the chancery court of the county where said corporation was doing business, or the chancellor thereof in vacation, shall on ten (10) days' notice require the payment of all, or such part thereof as is on hand, until the full amount due is paid. Nothing herein contained shall in any manner vary or affect the liability of such officer or his bondsmen.

HISTORY:
Codes, 1892, § 3077; 1906, § 3485; Hemingway's 1917, § 2823; 1930, § 2914; 1942, § 4060; Laws, 1922, ch. 177.

Cross References —
Prohibition against payment or receipt of money by state treasurer, except upon warrant or certificate, see § 7-9-13.

State depositories, see §§ 27-105-1 et seq.

Depositories for local governments, see §§ 27-105-301 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Public funds, what are.
3. Funds protected—generally.
4. —Effect of giving bond or security.
5. Funds not protected.
6. Bank guaranty fund.
7. Liability—generally.
8. —For interest on deposited funds.
9. Priority.

1. In general.
This statute does not in effect prohibit and make unlawful deposits of sheriffs and tax collectors in current accounts in banks, so as to render the trust fund doctrine inapplicable upon the bank's insolvency, but merely under-

takes to, and does, as to state banks, effect a preference for this kind of public deposits in liquidation proceedings by charging all the assets of the bank with a general preferential lien. Webster v. United States Fidelity & Guaranty Co., 71 F.2d 475, 1934 U.S. App. LEXIS 3120 (5th Cir. Miss. 1934).

This statute cannot be applied to create a preference in the liquidation of a national bank. Webster v. United States Fidelity & Guaranty Co., 71 F.2d 475, 1934 U.S. App. LEXIS 3120 (5th Cir. Miss. 1934).

So far as this statute is construed to establish a general preference against the assets of a failed bank irrespective of the tracing of funds which never belonged to the bank, it is in conflict with a Federal statute and cannot be applied to a failed national bank. Gulley v. Wisdom, 69 F.2d 495, 1934 U.S. App. LEXIS 3585 (5th Cir. Miss. 1934).

The depository law (Act of 1908 ch 96, as amended by Laws 1910 ch 224), when put into operation supersedes and annuls Code 1906, § 3485, and to that extent supersedes such section. Bank of Commerce v. Clark, 114 Miss. 850, 75 So. 595, 1917 Miss. LEXIS 91 (Miss. 1917).

This section is in derogation of common right and is to be strictly construed. Potter v. Fidelity & Deposit Co., 101 Miss. 823, 58 So. 713, 1911 Miss. LEXIS 180 (Miss. 1911); United States Fidelity & Guaranty Co. v. First State Bank, 103 Miss. 91, 60 So. 47, 1912 Miss. LEXIS 141 (Miss. 1912).

2. Public funds, what are.

So called revolving funds of the county on deposit with county depository were not private funds and were within the protective purview of this section. United States Fidelity & Guaranty Co. v. Sunflower County, 194 Miss. 680, 12 So. 2d 142, 1943 Miss. LEXIS 61 (Miss. 1943).

While drainage district funds on deposit with county depository bank were not "county funds," they nevertheless were public funds within the purview of this section. United States Fidelity & Guaranty Co. v. Sunflower County, 194 Miss. 680, 12 So. 2d 142, 1943 Miss. LEXIS 61 (Miss. 1943).

The funds of a bank in liquidation deposited or loaned by the superintendent of banks in charge of such bank in liquidation to another bank in liquidation were not public funds within the purview of this section, giving preference to public funds, because the funds involved were not funds of the government, but funds held by a state officer in administering the liquidation of a bank for the benefit of depositors and creditors. United States Fidelity & Guaranty Co. v. State, 186 Miss. 1, 188 So. 911, 1939 Miss. LEXIS 214 (Miss. 1939).

Funds deposited by the sheriff of the county in his official account are public funds. Coahoma County v. Mississippi Fire Ins. Co., 68 F.2d 489, 1934 U.S. App. LEXIS 4886 (5th Cir. Miss. 1934).

3. Funds protected—generally.

Under Laws 1910, ch. 138 §§ 1 and 2 and ch. 137, although an order was duly adopted by the municipal authorities making it depository, where in lieu of the bond of the surety company the bank furnished a personal bond signed by individual sureties, it did not become a legal depository, and the city, the bank being in process of liquidation, had the right to proceed under this section (Code 1906, § 3485). Bank of Commerce v. Gulfport, 117 Miss. 591, 78 So. 519, 1918 Miss. LEXIS 201 (Miss. 1918).

Funds deposited by a tax collector in a bank are trust funds and must be so dealt with in case of an assignment for the benefit of creditors as to pay the tax collector in full in preference to other creditors. Fogg v. Hebdon, 80 Miss. 750, 32 So. 285 (Miss. 1902).

4. —Effect of giving bond or security.

Where depository had given county a number of drainage bonds, which it owned, as security for additional funds of the county, and at time depository closed its doors, there was money on deposit in excess of that secured by surety bonds, county was entitled to credit proceeds of drainage bonds against deposited funds, and where such application did not fully reimburse the county, the surety companies could not recover from county on an agreement under which they were to receive the balance of such proceeds after payment to the county of the difference between the face amount of the surety bonds and the public funds covered thereby. United States Fidelity & Guaranty Co. v. Sunflower County, 194 Miss. 680, 12 So. 2d 142, 1943 Miss. LEXIS 61 (Miss. 1943).

The fact that a tax collector accepted a private bond to secure a deposit made by him of the public funds in a bank would not affect the status of the deposit as fixed and defined by this section (Code 1906, § 3485). Bank of Commerce v. Clark, 114 Miss. 850, 75 So. 595, 1917 Miss. LEXIS 91 (Miss. 1917).

Where a board of supervisors elected a depository of county funds there being then on deposit less than 90% of the amount of the security, and afterwards the board permitted the depository to have a greater amount of public funds than the security, Code 1906, § 3485, applied to such excess, though not to the funds secured. Powell v. Board of Sup'rs, 107 Miss. 410, 65 So. 499, 1914 Miss. LEXIS 98 (Miss. 1914).

5. Funds not protected.

Funds of board of drainage commissioners deposited in a bank are not within the protection of this section, such board not being within the meaning of the word "municipal." United States Fidelity & Guaranty Co. v. First State Bank, 103 Miss. 91, 60 So. 47, 1912 Miss. LEXIS 141 (Miss. 1912).

Moneys placed by the state in a bank as a depository under laws of 1908, ch. 96 are not trust funds within the meaning of this section. Potter v. Fidelity & Deposit Co., 101 Miss. 823, 58 So. 713, 1911 Miss. LEXIS 180 (Miss. 1911).

6. Bank guaranty fund.

State funds deposited in bank which has not qualified as depository protected by guaranty fund. Love v. Murry, 135 Miss. 749, 100 So. 277, 1924 Miss. LEXIS 88 (Miss. 1924).

State Banking Department making payments to city after failure of municipal depository held subrogated to rights of city against depository bond and sureties. Perkins v. State, 130 Miss. 512, 94 So. 460, 1922 Miss. LEXIS 229 (Miss. 1922).

7. Liability—generally.

All assets of bank are liable for prior payment thereof, and it is unnecessary that the trust funds, either in original or transmuted form, be pointed out; it being necessary only to show that the funds went into bank. Pearl River County v. Merchants Bank & Trust Co., 168 Miss. 612, 151 So. 756, 1934 Miss. LEXIS 355 (Miss. 1934).

8. —For interest on deposited funds.

Bank not qualifying as public depository, accepting county funds, was trustee and accountable for interest. Sunflower County v. Bank of Drew, 139 Miss. 408, 104 So. 355, 1925 Miss. LEXIS 173 (Miss. 1925).

Even though the treasurer of a board of commissioners of the Levee District is an insurer of public moneys received by him, he is not entitled to retain interest thereon. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

9. Priority.

Where county depository, receiving for collection school warrants belonging to county, forwarded warrants to State depository for collection, and State depository, on day before it closed for unrestricted business, received State's check for the warrants, charged amount to State's unsecured deposit, credited county depository therewith, and mailed notice of collection and credit to county depository too late for latter to obtain cash, county held entitled to preference out of State depository's assets. Pearl River County v. Merchants Bank & Trust Co., 168 Miss. 612, 151 So. 756, 1934 Miss. LEXIS 355 (Miss. 1934).

Where State depository had no security pledged as to certain State deposit, such deposit was trust fund for which State would be entitled to preference out of assets of bank upon its liquidation. Pearl River County v. Merchants Bank & Trust Co., 168 Miss. 612, 151 So. 756, 1934 Miss. LEXIS 355 (Miss. 1934).

Municipality is entitled to priority of payment of its claim out of the assets of the bank. Wardlaw v. Planters' Bank of Clarksdale, 131 Miss. 93, 95 So. 135, 1922 Miss. LEXIS 295 (Miss. 1922).

Bank redepositing county funds not entitled to priority of payment by insolvent bank in which funds deposited. Wardlaw v. Planters' Bank of Clarksdale, 131 Miss. 93, 95 So. 135, 1922 Miss. LEXIS 295 (Miss. 1922).

County's claim for deposits in bank at time of bank's failure is superior to that of a depositor to whom bank had issued bills of exchange on bank in another city. Jourdan v. Bennett, 119 Miss. 576, 81 So. 239, 1919 Miss. LEXIS 34 (Miss. 1919).

A levee board upon the failure of a bank which had complied with the statutes was entitled to priority of payment from its receiver. Board of Levee Comm'rs v. Powell, 109 Miss. 415, 69 So. 215, 1915 Miss. LEXIS 172 (Miss. 1915).

This section is in derogation of the common law in giving priority to the state over general creditors, and must be strictly construed. Potter v. Fidelity & Deposit Co., 101 Miss. 823, 58 So. 713, 1911 Miss. LEXIS 180 (Miss. 1911).

The statute was intended to provide for the security of public funds; as against general creditors it makes all the assets of the bank liable for the prior payment of such trust funds. Commercial Bank of Brookhaven v. Hardy, 97 Miss. 755, 53 So. 395, 1910 Miss. LEXIS 296 (Miss. 1910).

Under this section, public moneys deposited by a sheriff have priority of payment on an assignment for the benefit of creditors. Metcalfe v. Merchants' & Planters' Bank, 89 Miss. 649, 41 So. 377, 1906 Miss. LEXIS 40 (Miss. 1906).

RESEARCH REFERENCES

ALR.

Liability of public officer for interest or other earnings received on public money in his possession. 5 A.L.R.2d 257.

Liability of clerk of court, county clerk or prothonotary, or surety on bond, for negligent or wrongful acts of deputies or assistants. 71 A.L.R.2d 1140.

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 341, 402, 420.

CJS.
67 C.J.S., Officers §§ 259-269.

§ 25-1-72. Duty to deposit funds into county depository.

All county officers who receive funds payable into the county treasury shall deposit such funds into the county depository on the day when they are collected or on the next business day thereafter.

HISTORY:
Laws, 1985, ch. 514, § 13; Laws, 1986, ch. 305, § 2, eff from and after passage (approved February 27, 1986).

§ 25-1-73. Officers liable for costs of collection of public funds improperly withheld.

Any officer, state, county, municipal, or district, or any other custodian of public funds or property who shall improperly withhold same from the state or county treasury or other authority whose duty it is to receive same, or who shall fail to turn property over to the proper custodian, or who shall in anywise be in default as to any money or property held by him as a public official in this state or in any other capacity as custodian of such funds or property which may come into his hands by virtue of his official position, whether in the proper performance of his official duties or otherwise, shall be liable on his bond for all costs of collection or recovery of money or property, including in such costs the commissions, if any, of the state tax commission or the attorney general, and all other costs connected therewith, including interest on funds improperly withheld for such time as such funds have been withheld, and reasonable rental and damages where property belonging to the public is so withheld. Any such public official who shall unlawfully pay any public funds to himself, or who shall knowingly and designedly pay such funds to any other person not entitled thereto without allowance regularly made by the proper authority, shall be liable on his official bond for all costs of recovery of such funds, including the commissions, if any, which may be due to the officer making the collection.

It is the purpose of this section to preserve in its entirety the public funds and property in this state; and it shall be so construed that the commissions, if any, and fees of the attorney general and the state tax commission, and all other costs of collection must be borne by such derelict official or custodian.

HISTORY:
Codes, 1930, § 2915; 1942, § 4061; Laws, 1924, ch. 328; Laws, 1928, Ex ch. 90; Laws, 1962, ch. 588, § 18, eff from and after Jan. 1, 1964.

Editor's Notes —
Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in

connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Remedy against clerk of the justice court for money, fines, or penalties withheld, see § 9-11-23.

Duties of circuit court clerks respecting collection of fines, penalties, and forfeitures assessed by court, see §§ 11-7-217, 99-19-65.

Liability of State Tax Commission for costs in suits for use of state, county, or municipality, see § 27-3-33.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Duty to turn over funds or property.
3. Liability.

1. In general.

This section is penal in nature and cannot be extended by construction. Gully v. White, 167 Miss. 691, 146 So. 852, 1933 Miss. LEXIS 90 (Miss. 1933).

2. Duty to turn over funds or property.

It is the duty of the state tax collector, on expiration of his term of office, to pay into the state treasury the balance remaining of all commissions collected by him during the term, after deducting therefrom his office expenses, including his own salary, whether the commissions were collected in the proper performance of his duties or otherwise, and when so paid into the treasury this money becomes part of the state's general fund. City of Biloxi v. Gully, 182 Miss. 723, 180 So. 821, 1938 Miss. LEXIS 160 (Miss. 1938).

State Tax Collector could not pay commissions into treasury conditionally, and attempts to do so were not of legal efficacy so that such commissions became part of State's general fund. City of Biloxi v. Gully, 182 Miss. 723, 180 So. 821, 1938 Miss. LEXIS 160 (Miss. 1938).

3. Liability.

Under this section, with respect to an action against county board of supervisors by the state to collect a municipality's alleged proportionate share of ad valorem road taxes because it worked its own streets, the members of the board of supervisors, for the expense of collecting, would be limited to faults flowing from ministerial or non-discretionary duties, and not in matters where the board has a legal discretion, or judicial or quasi-judicial powers. State use of Aberdeen v. Board of Supervisors, 188 Miss. 636, 196 So. 253, 1940 Miss. LEXIS 73 (Miss. 1940).

In an action against a sheriff and the surety on his official bond to recover moneys received by the sheriff from the county treasury for various services rendered by such sheriff to the county as sheriff in excess of what the governing statutes permitted, the surety was not liable on the bond for such moneys where they did not come into the sheriff's hands by virtue of his office, properly or otherwise. United States Fidelity & Guaranty Co. v. Rice, 184 Miss. 443, 185 So. 563, 186 So. 620, 1939 Miss. LEXIS 25 (Miss. 1939).

State Tax Collector and bondsman held not liable for commissions paid to treasury at expiration of term, although commissions were unlawfully paid Collector and demand made on him for repayment while still under his control. City of Biloxi v. Gully, 182 Miss. 723, 180 So. 821, 1938 Miss. LEXIS 160 (Miss. 1938).

City held not entitled to recover from State Tax Collector amount paid by city for audit of its books in order to obtain data upon which to institute suit against Collector for commissions unlawfully paid to him. Gully v. Biloxi, 177 Miss. 782, 171 So. 698, 1937 Miss. LEXIS 148 (Miss. 1937).

State Tax Collector held not personally liable to city for commissions paid to collector by virtue of his office and paid by collector to State Treasurer, even though the commissions were unlawfully paid to collector. Gully v. Biloxi, 177 Miss. 782, 171 So. 698, 1937 Miss. LEXIS 148 (Miss. 1937).

State auditor withholding from the treasury tax money paid under protest and subsequently refunding it, was not liable for tax collector's commission, since the money did not rightfully belong to the state; nor was the deputy collector entitled to commission on such money, since he had no vested right to a commission on the mere fact that he discovered that money had been collected and should be paid into the proper treasury. Gully v. White, 167 Miss. 691, 146 So. 852, 1933 Miss. LEXIS 90 (Miss. 1933).

This section, being a general statute dealing with all public officers, is inapplicable in determining whether county could recover from insolvent county depository fees for attorney employed to collect deposits due county, since county depositories are the subject of special legislation. Winston County v. Louisville Home Bank, 164 Miss. 64, 143 So. 884, 1932 Miss. LEXIS 229 (Miss. 1932).

Bank having on deposit tax collections cannot escape penalty for failure to account for interest by commingling funds so that tax collections cannot be determined. Bank of Indianola v. Miller, 147 Miss. 695, 112 So. 877, 1927 Miss. LEXIS 321 (Miss. 1927), writ of error dismissed, 276 U.S. 605, 48 S. Ct. 337, 72 L. Ed. 727, 1928 U.S. LEXIS 140 (U.S. 1928).

OPINIONS OF THE ATTORNEY GENERAL

Planning and Development Districts are either public entities or instrumentalities of political subdivisions of the state and, as such, are subject to audit by the State Auditor. 2003 Miss. Op. Att'y Gen. 573.

RESEARCH REFERENCES

ALR.

Liability of clerk of court, county clerk or prothonotary, or surety on bond, for negligent or wrongful acts of deputies or assistants. 71 A.L.R.2d 1140.

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 341, 402, 420.

CJS.

67 C.J.S., Officers §§ 259-269.

§ 25-1-75. Duplicate receipt books upon transfer of funds.

All state boards, commissions, agencies, bureaus, and other departments of the State of Mississippi, and the governing authorities of all counties, municipalities, and other political subdivisions shall maintain duplicate receipt books, showing the date and the amount of money received by said department or political subdivision from any other state department or political subdivision. Upon the distribution of any funds to any state department, agency, or political subdivision of the state, the distributing department or agency shall demand a receipt for said funds. The recipient of said funds shall execute said receipt and give to the disbursing agency or political subdivision the original thereof, and shall retain in a receipt book kept for that purpose a duplicate of said receipt, showing the amount received by said agency or political subdivision.

The receipt books provided in this section shall be of permanent type, shall be approved by the state auditor, and shall be a public record available for inspection during office hours by any citizen.

Any official, authorized to disburse or receive funds as contemplated hereby, who does not demand a receipt or keep a duplicate receipt as so contemplated shall be guilty of a misdemeanor.

HISTORY:

Codes, 1942, § 4061-21; Laws, 1954, ch 386, §§ 1-3 [¶¶ 1-3]

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-1-77. Bureau of Fleet Management created; purpose; duties; purchase, rent, lease or acquisition of motor vehicle for state use; certain documentation required; bureau may seize and dispose of certain state agency vehicles; reports; retention of vehicles seized under forfeiture laws; exemption of state institution of higher learning.

(1) There is created the Bureau of Fleet Management within the Office of Purchasing, Travel and Fleet Management, Department of Finance and Administration, for the purposes of coordinating and promoting efficiency and economy in the purchase, lease, rental, acquisition, use, maintenance and disposal of vehicles by state agencies. The Executive Director of the Department of Finance and Administration may employ a Fleet Management Officer to manage the bureau and carry out its purposes. The bureau may employ other suitable and competent personnel as necessary. The bureau shall encourage the use of fuel efficient or hybrid vehicles appropriate for the state agency's intended purpose and, when feasible, the use of alternative fuels or energy sources, including, but not limited to, ethanol, biodiesel, natural gas or electric power. The bureau shall prepare a fiscal analysis of the cost-effectiveness of using alternative fuel or energy source vehicles by state agencies, and submit a report of that fiscal analysis to the Legislature by December 15, 2009. Not later than July 1, 2014, at least seventy-five percent (75%) of all vehicles to which the bureau holds title in the name of the state must have a fuel economy estimate by the United States Environmental Protection Agency of forty (40) miles per gallon or higher for highway driving.

(2) The Bureau of Fleet Management shall perform the following duties:

(a) To hold title in the name of the State of Mississippi to all vehicles currently in possession of state agencies as defined in Section 25-9-107(d) and to assign vehicles to such agencies for use; however, the bureau shall exempt any agency or agency vehicles from the provisions of this paragraph (a) if it determines that state or federal law requires that title be vested only in the agency;

(b) To establish rules and regulations for state agency use of vehicles;

(c) To gather information and specify proper fleet management practices for state agencies;

(d) To acquire fleet management software and require agencies to provide necessary information for the bureau to properly monitor the size, use, maintenance and disposal of the state's fleet of vehicles; the bureau shall communicate regularly with the fleet managers of each state agency to determine strengths and weaknesses of the various fleet operations; the bureau shall disseminate information to the agencies so that each can take advantage of any beneficial practices being incorporated at other entities; the bureau shall promulgate rules and regulations concerning the mileage reimbursement practices of each state agency;

(e) To carry out responsibilities relative to budget recommendations as provided in Section 27-103-129;

(f) To reassign vehicles in the possession of any state agency if the bureau believes that another state agency can make more efficient use of a vehicle; however, except as otherwise provided in Section 51–11–101, the state agency receiving the reassigned vehicle shall pay to the previous agency's special fund, or if no special fund exists to the State General Fund, the National Automobile Dealers Association (NADA) wholesale value for the vehicle or the estimated amount for which the vehicle would have sold at auction, as shall be determined by the bureau, whichever is less;

(g) To investigate at any time the vehicle usage practices of any state agency; and

(h) To require each agency to submit to the bureau a vehicle acquisition/use/disposal plan on an annual basis. From the plans received, the bureau shall evaluate the proposed plans and shall submit a recommendation to the Legislature prior to January 1 of each year.

(3) No state department, institution or agency shall purchase, rent, lease or acquire any motor vehicle, regardless of the source of funds from which the motor vehicle is to be purchased, except under authority granted by the Department of Finance and Administration. The Bureau of Fleet Management, Department of Finance and Administration, shall promulgate rules and regulations governing the purchase, rental, lease or acquisition of any motor vehicle by a state department, institution or agency with regard to the appropriateness of the vehicle to its intended use. The Bureau of Fleet Management, Department of Finance and Administration, shall only grant authority to purchase, rent, lease or acquire a motor vehicle which is the lowest cost vehicle to carry out its intended use. Before the disposal or sale of any vehicle, the Bureau of Fleet Management shall make a determination that the lifetime use and mileage of the vehicle has been maximized and that it would not be feasible for another state agency to use the vehicle.

(4) The department, institution or agency shall maintain proper documentation which provides the intended use of the vehicle and the basis for choosing the vehicle. Such documentation shall show that the department, institution or agency made diligent efforts to purchase, rent, lease or acquire a vehicle that is the lowest cost vehicle for its intended use. Such documentation shall be updated as needed when the intended use of the vehicle or any other facts concerning the vehicle are changed. All such documentation shall be approved by the State Fleet Officer prior to purchase, rental, lease or acquisition or change in use of any vehicle and shall be maintained and made available for review by the State Auditor, any other reviewing agency and the Legislature. The Bureau of Fleet Management shall immediately notify the department head of any agency that has a vehicle found to be in violation of the bureau's rules and regulations. At the same time, the bureau shall notify the Speaker of the House of Representatives and the Lieutenant Governor of its findings regarding any such vehicle. If the violation is not rectified within five (5) days of the notice, then the bureau may seize the vehicle and dispose of it as the bureau deems to be in the best interest of the State of Mississippi.

(5) On or before September 1 of each year, the Bureau of Fleet Management shall prepare and deliver to the Senate and House Appropriations Committees and the Joint Legislative Budget Committee a report containing any irregularities that it finds concerning purchases of state-owned vehicles.

(6) The Department of Public Safety and the Department of Wildlife, Fisheries and Parks may retain any vehicle seized pursuant to the forfeiture laws of this state, and the total number of vehicles assigned to each such agency shall not be reduced by the number of seized vehicles which the agency retains.

(7) The Bureau of Fleet Management, upon request, shall grant an exemption from the provisions of this section for only any vehicle assigned to a sworn officer of the Department of Public Safety and used in undercover operations when the bureau determines that compliance could jeopardize the life, health or safety of the sworn officer.

(8) The provisions of this section shall not apply to any state institution of higher learning.

(9) When making requests for authority to purchase, rent, lease or acquire vehicles as provided in subsection (3) of this section, agencies shall submit the lowest cost vehicle possible to carry out its intended use. Any such request shall be in writing from the agency head, certifying the vehicle requested is the lowest cost option available and acknowledging that any request contrary to this provision shall subject the agency head to penalties as provided in Sections 25-1-91, 31-7-55 and 31-7-57, where applicable. The Bureau of Fleet Management shall only approve the lowest cost vehicle, which in its estimation, will carry out the intended use. No agency may purchase any vehicle that the Bureau of Fleet Management has disapproved as being a higher cost option.

(10) No requests authorized under subsections (3) and (9) of this section shall be approved by the Bureau of Fleet Management if the requesting agency has not properly maintained in the fleet/asset reporting system all information required by the Bureau of Fleet Management. Agencies shall correct any inadequacies or discrepancies in the system noted by the Bureau of Fleet Management before the bureau may approve any requests.

HISTORY:

Codes, 1942, § 4061-02; Laws, 1950, ch. 448, § 2; Laws, 1952, ch. 347; Laws, 1962, ch. 497, § 12; Laws, 1984, ch. 488, § 166; Laws, 2001, ch. 561, § 1; Laws, 2003, ch. 317, § 1; Laws, 2006, ch. 537, § 1; Laws, 2009, ch. 458, § 1; Laws, 2009, ch. 546, § 5; Laws, 2017, ch. 409, § 3, eff from and after July 1, 2017; Laws, 2018, ch. 356, § 6, eff from and after passage (March 15, 2018).

Joint Legislative Committee Note —

Section 1 of ch. 458, Laws of 2009, effective from and after July 1, 2009 (approved on March 30, 2009), amended this section. Section 5 of ch. 546, Laws of 2009, effective from and after passage (approved April 15, 2009) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Amendment Notes —

The 2017 amendment added (9) and (10).

The 2018 amendment, effective March 15, 2018, added the exception in (2)(f).

Cross References —

State Fiscal Management Board (now the Department of Finance and Administration), generally, see §§ 27-104-1 et seq.

Purchases for state, generally, see §§ 31-7-1 et seq.

Purchase of aircraft by state, see §§ 61-13-1, 61-13-5.

JUDICIAL DECISIONS

1. In general.

Duties and responsibilities, including allowing authority for Educational Television to contract (§ 37-63-11), giving concurrence for the use of funds to travel outside the continental United States (§ 25-3-41), advertising for and accepting bids on equipment for the State Crime Laboratory (§ 63-11-47), granting authority for the purchase of motor vehicles by state departments, institutions, or agencies (§ 25-1-77), and approving dispersement of funds by the Mississippi Air and Water Pollution Commission (§ 49-17-13), are administrative functions within the prerogative of the executive department, and statutes vesting those powers and functions in members of the legislature violate Miss. Const. Art. 1, § 2 and are unconstitutional. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

§ 25-1-78. Moratorium on acquisition of motor vehicles by state agencies; reduction in total number of motor vehicles by certain agencies; exemptions.

(1) For purposes of this section, the term "state agency" means any agency that is subject to oversight by the Bureau of Fleet Management of the Department of Finance and Administration under Section 25-1-77.

(2) Except as otherwise provided in this section, beginning on July 1, 2017, through June 30, 2018, the Bureau of Fleet Management, Department of Finance and Administration, shall not approve the purchase, lease or acquisition of any motor vehicle by a state agency, regardless of the source of funds used. However, any agency that has a fleet of not more than fifty (50) vehicles may replace a vehicle that has been wrecked and deemed a total loss or any vehicle whose repair cost exceeds the cash value of the vehicle as determined by the Bureau of Fleet Management. Documentation of such loss or repair costs must be submitted to the Bureau of Fleet Management prior to replacement of the vehicle.

(3) Beginning July 1, 2012, any state agency with a fleet of more than fifty (50) motor vehicles shall reduce the total number of its motor vehicles by two percent (2%) each fiscal year until June 30, 2016. The Bureau of Fleet Management and the State Auditor shall work together to enforce the provisions of this subsection.

(4) The provisions of subsections (2) and (3) of this section, with regard to the purchase, lease or acquisition of vehicles and to the mandatory reduction of the agency's fleet of vehicles, shall not apply to:

(a) A state agency's law enforcement or emergency vehicles, upon demonstrating to the Bureau of Fleet Management a justifiable need to be excluded from the provisions of subsections (2) and (3) of this section.

(b) A state agency's vehicles that are acquired by the use of grant monies that are specified to be used for that purpose and for which no state matching funds from the State General Fund are required, expended or used.

(c) Vehicles of the Department of Child Protection Services.

HISTORY:

Laws, 2012, ch. 559, § 1; Laws, 2014, ch. 534, § 1; Laws, 2017, ch. 409, § 1, eff from and after July 1, 2017.

Editor's Notes —

Laws of 2014, ch. 534, § 10 provides:

"SECTION 10. This act shall take effect and be in force from and after July 1, 2014; however, Sections 4 through 8 of this act shall take effect and be in force from and after the passage of this act."

Amendment Notes —

The 2017 amendment substituted "July 1, 2017, through June 30, 2018" for "July 1, 2014, through June 30, 2015" in (2); added "and for which no state…expended or used" at the end of (4)(b); and added (4)(c).

§ 25-1-79. Use of state-owned automobiles.

It shall be unlawful for any officer, employee or other person whatsoever to use or permit or authorize the use of any automobile or any other motor vehicle owned by the State of Mississippi or any department, agency or institution thereof for any purpose other than upon the official business of the State of Mississippi or any agency, department or institution thereof. Further, it shall be unlawful for any such officer or employee to be paid or to receive any sums whatsoever for travel expense until the expenses for which payment is made, and each item thereof, have been actually incurred by such officer or employee, and then only upon the presentation of an itemized expense account which shall be approved in writing by the head of the department, agency or institution on whose behalf such travel is performed. However, it is expressly provided that any such officer or employee traveling on business for and in behalf of the State of Mississippi may, strictly in the discretion of an agency, institution or department head, receive in advance from state funds for the purpose of such travel expense a sum to be specified by such aforementioned superior. Further, strict account of any sum so advanced must be kept in accord with Section 25-1-81.

HISTORY:

Codes, 1942, § 4061-03; Laws, 1950, ch. 448, § 3; Laws, 2006, ch. 537, § 2, eff from and after July 1, 2006.

Cross References —

Exemption of state-owned automobiles from motor vehicle safety and responsibility provisions, see § 63-15-5.

RESEARCH REFERENCES

ALR.

What is "motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicles. 77 A.L.R.2d 945.

§ 25-1-81. Expense accounts and reports as to state-owned automobiles.

The Department of Finance and Administration shall refuse to issue warrants upon requisitions drawn in violation of the provisions hereof, and where any expense account is allowed and paid in violation of the provisions of Sections 25-1-77 through 25-1-93, it shall be the duty of the Department of

Finance and Administration to withhold the payment of any further expense accounts for the department, agency or institution involved until the amount of the account or accounts illegally paid shall be refunded and repaid to the State of Mississippi by the person receiving or approving same. It is further provided that the Department of Finance and Administration shall prescribe and deliver to each agency, department or institution a uniform system of expense accounts herein allowed, including a uniform system of depreciation allowance. All expense accounts for lodging shall be supported by receipted bills showing the payment thereof by such officer or employee. It is incumbent upon each agency, department or institution to abide by and utilize the method of uniform system of expense accounts so prescribed and delivered by the Department of Finance and Administration. Each agency, department or institution, in rendering its annual report to the Bureau of Fleet Management and the Legislature, shall show the number of state-owned automobiles purchased and operated during the year, the number purchased and operated out of funds appropriated by the Legislature, the number purchased and operated out of any other public funds, the miles traveled per automobile, the total miles traveled, the average cost per mile, and depreciation estimate on each automobile. The report shall also show the cost per mile and total number of miles traveled in privately-owned automobiles for which reimbursement is made out of state funds and any other information requested by the Bureau of Fleet Management.

HISTORY:

Codes, 1942, § 4061-04; Laws, 1950, ch. 448, § 4; Laws, 1970, ch. 519, § 1; Laws, 2006, ch. 537, § 5, eff from and after July 1, 2006.

Cross References —

Exemption of state-owned automobiles from motor vehicle safety-responsibility provisions, see § 63-15-5.

§ 25-1-83. Attending conventions, associations, or meetings.

It is further provided that no funds appropriated by the Legislature or received by any agency, department, or institution from any source whatever shall be used in defraying the expenses of any state employee, other than an officer or department head, in attending a convention, association, or meeting, unless such employee be duly authorized by prior approval in writing of the departmental head or officer in charge of such department, agency, or institution in strict accord with Sections 25-1-79 and 25-1-81. Each department, agency, or institution in its annual report to the Legislature shall separately show each association, convention, or meeting attended by any of its employees, the purposes thereof, the names of the employees attending, and the total cost to the state of such convention, association, or meeting.

HISTORY:

Codes, 1942, § 4061-06; Laws, 1950, ch. 448, § 6; Laws, 1970, ch. 470, § 1, eff from and after July 1, 1970.

OPINIONS OF THE ATTORNEY GENERAL

The Executive Director of the Mississippi Department of Transportation lacks authority to delegate approval of out of state travel requests. 2002 Miss. Op. Att'y Gen. 242.

§ 25-1-85. Repealed.

Repealed by Laws, 2001, ch. 561, § 2, eff from and after passage (approved April 7, 2001).

[Codes, 1942, § 4061-07; Laws, 1950, ch. 448, § 7; Laws, 1952, ch. 358; Laws, 1956, ch. 370; Laws, 1958, ch. 467; Laws, 1962, chs. 497, 498, § 10; Laws, 1964, ch. 567, § 1; Laws, 1966, ch. 649, § 17, 1968, ch. 500, § 1; Laws, 1970, ch. 479, § 1; Laws, 1972, ch. 438, § 1; Laws, 1973, ch. 480, § 1; Laws, 1974, ch. 559 § 1; Laws, 1976, ch. 472; Laws, 1979, ch. 448; Laws, 1980, ch. 436; Laws, 1981, ch. 327, § 1; Laws, 1981, ch. 366, § 7; Laws, 1983, ch. 392, § 1; Laws, 1984, ch. 354, § 3; Laws, 1984, ch. 475; Laws, 1984, ch. 488, § 167; Laws, 1985, ch. 485, § 1; Laws, 1987, ch. 496; Laws, 1988, ch. 378; Laws, 1989, ch. 512, § 1; Laws, 1990, ch. 515, § 1; Laws, 1991, ch. 530, § 7; Laws, 1991, ch. 595, § 1; Laws, 1992, ch. 496, § 24; Laws, 1993, ch. 555, § 1; Laws, 1994, ch. 651, § 1; Laws, 1995, ch. 543, § 1; Laws, 1996, ch. 531, § 1; Laws, 1997, ch. 592, § 1; Laws, 1998, ch. 302, § 1; Laws, 1998, ch. 547, § 1; Laws, 2000, ch. 599, § 1, eff from and after passage (approved May 20, 2000).]

Editor's Notes —

Former § 25-1-85 provided for the number of passenger vehicles that could be purchased, owned, and operated by state departments, agencies, or institutions.

§ 25-1-87. Marking publicly owned or leased vehicle; exceptions; effect of noncompliance.

All motor vehicles owned or leased by the State of Mississippi or any agency, department or political subdivision thereof, which shall include counties and municipalities, when such agency or department or political subdivision, which shall include counties and municipalities, is supported wholly or in part by public taxes or by appropriations from public funds, shall have painted on both sides in letters at least three (3) inches in height, and on the rear in letters not less than one and one-half (1½) inches in height, the name of the state agency or department, or political subdivision, which shall include counties and municipalities, in a color which is in contrast with the color of the vehicle; provided, however, that a permanent decal may be used in lieu of paint, and provided further, that any municipality may affix a permanent decal or design at least twelve (12) inches in height and twelve (12) inches in width on both sides of the vehicle with the name of the municipality within or across the permanent decal or design, and the permanent design or decal shall be in a color or colors which are in contrast with the color of the vehicle. No privilege license tag shall be issued for such vehicle until the name has been painted thereon or a permanent design or decal affixed thereto as required by this section. A permanent decal may be used in lieu of paint. The provisions of this paragraph shall not apply to vehicles used by the Chief Executive of the State of Mississippi, to vehicles owned or leased by the Department of Economic and Community Development, to vehicles owned or leased by the Office of the Attorney General, to not more than one (1) vehicle owned or leased by the Department of Finance and Administration for use by the Capitol Police, to vehicles owned or leased by the Mississippi State Board of Medical Licensure and used only by the Investigative Division of the board, to one (1) vehicle owned or leased by the Executive Director of the Department of Mental Health, to not more than one (1) vehicle owned or leased by the Mississippi Division of Medicaid, to one (1) vehicle owned or leased by the State Department of Rehabilitation Services, to one (1) vehicle owned or leased by the Mississippi Department of Transportation, to one (1) vehicle owned or leased by the Commissioner of the Mississippi Department of Corrections, to not more than three (3) vehicles owned or leased by the Department of Corrections and used only by Community Services Division officers, to not more than one (1) vehicle owned or leased by the Mississippi Department of Transportation and used only by an investigator employed by the Mississippi Department of Transportation, to not more than two (2) vehicles owned or leased by the Mississippi Department of Marine Resources, or to not more than one (1) vehicle owned or leased by the Mississippi State Tax Commission; and upon receipt of a written request from the State Adjutant General, the Commissioner of Public Safety, the Director of the Alcoholic Beverage Control Division of the Mississippi State Tax Commission, the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks, the Director of the Bureau of Narcotics, the Executive Officer of the Board of Pharmacy, the Executive Director of the Mississippi Gaming Commission, the State Auditor or a president or chancellor of a state institution of higher learning, the Governor may authorize the use of specified unmarked vehicles only in instances where such identifying marks will hinder official investigations, and the governing authorities of any municipality may authorize the use of specified, unmarked police vehicles when identifying marks would hinder official criminal investigations by the police. The written request or the order or resolution authorizing such shall contain the manufacturer's serial number, the state inventory number, where applicable, and shall set forth why the vehicle should be exempt from the provisions of this paragraph. In the event the request is granted, the Governor shall furnish the State Department of Audit with a copy of his written authority for the use of the unmarked vehicles, or the governing authority, as the case may be, shall enter its order or resolution on the minutes and shall furnish the State Department of Audit with a certified copy of its order or resolution for the use of the unmarked police vehicle. The state property auditors of the State Department of Audit shall personally examine vehicles owned or leased by the State of Mississippi or any agency, department or commission thereof and report violations of the provisions of this paragraph to the State Auditor and the Chairman of the Joint Legislative Committee on Performance Evaluation and Expenditure Review. Any vehicle found to be in violation of this paragraph shall be reported immediately to the department head charged with such vehicle, and five (5) days shall be given for compliance; and if not complied with, such vehicles shall be impounded by the State Auditor until properly marked or exempted.

Upon notification to the State Tax Commission by the State Auditor that any municipality or political subdivision is not in compliance with this section, the State Tax Commission shall withhold any sales tax due for distribution to any such municipality and any excise tax on gasoline, diesel fuel, kerosene and oil due any such county and for any months thereafter, and shall continue to withhold such funds until compliance with this section is certified to the State Tax Commission by the State Department of Audit.

County-owned motor vehicles operated by the sheriff's department shall not be subject to the provisions of this section, but shall be subject to the provisions of Section 19-25-15. County-owned motor vehicles operated by a family court established pursuant to Section 43-23-1 et seq., shall not be subject to the provisions of this section.

State-owned or leased motor vehicles operated by the Department of Mental Health or by facilities operated by the Department of Mental Health and used for transporting patients living in group homes or alternative living arrangements shall not be subject to the provisions of this section.

Up to four (4) passenger automobiles owned or leased by economic development districts or economic development authorities shall not be subject to the provisions of this section.

State-owned or leased motor vehicles operated by the Agricultural and Livestock Theft Bureau of the Department of Agriculture and Commerce and used to investigate livestock theft shall not be subject to the provisions of this section.

Up to three (3) motor vehicles owned or leased by the Pascagoula Municipal Separate School District for use by district security officers shall not be subject to the provisions of this section.

Up to three (3) motor vehicles owned or leased by the Department of Human Services for use only by the Program Integrity Division and the executive director shall not be subject to the provisions of this section.

Up to three (3) motor vehicles owned or leased by the Department of Insurance for use by the State Fire Marshal's Office shall not be subject to the provisions of this section.

The motor vehicles of a public airport shall not be subject to the provisions of this section upon a finding by the governing authority of such airport that marking a motor vehicle as required in this section will compromise security at such airport.

HISTORY:

Codes, 1942, § 4061-07; Laws, 1950, ch. 448, § 7; Laws, 1952, ch. 358; Laws, 1956, ch. 370; Laws, 1958, ch. 467; Laws, 1962, chs. 497, 498, § 10; Laws, 1964, ch. 567, § 1; Laws, 1966, ch. 649, § 17; Laws, 1968, ch. 500, § 1; Laws, 1970, ch. 479, § 1; Laws, 1972, ch. 438, § 1; Laws, 1973, ch. 480, § 1; Laws, 1974, ch. 559, § 2; Laws, 1975, ch. 489, § 2; Laws, 1983, ch. 392, § 2; Laws, 1985, ch. 519, § 8; Laws, 1988, ch. 321; Laws, 1989, ch. 411, § 1; Laws, 1989, ch. 524, § 14; Laws, 1994, ch. 470, § 1; Laws, 1994, ch. 608, § 1; Laws, 1995, ch. 543, § 2; Laws, 1996, ch. 404, § 1; Laws, 1996, ch. 501, § 1; Laws, 1997, ch. 592, § 2; Laws, 1998, ch. 547, § 2; Laws, 1999, ch. 398, § 1; Laws, 2000, ch. 516, § 3; Laws, 2000, ch. 588, § 1; Laws, 2003, ch. 471, § 1, eff from and after July 1, 2003.

Joint Legislative Committee Note —

Section 3 of ch. 516, Laws of 2000, effective from and after its passage (approved April 30, 2000), amended this section. Section 1 of ch. 588, Laws of 2000, effective from and after July 1, 2000, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 588, Laws of 2000, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 43-23-1 referred to in this section was repealed by Laws, 1999, ch. 432, § 2, eff from and after May 28, 1999, the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965.

Section 49-1-4 provides that the term "Department of Wildlife Conservation" shall mean the Department of Wildlife, Fisheries and Parks.

Section 57-1-54 provides that the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Department of Economic and Community Development.

Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

Cross References —

Joint legislative committee on performance evaluation and expenditure review, see §§ 5-3-51 through 5-3-69.

Reports concerning state-owned automobiles, see § 25-1-81.

Regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety, see § 31-7-9.

Police vehicles to be marked with blue lights, except as provided in this section, see § 63-7-19.

Exemption of state-owned automobiles from motor vehicle safety-responsibility provisions, see § 63-15-5.

OPINIONS OF THE ATTORNEY GENERAL

Municipalities may mark vehicles which are leased with permanent decal or design in lieu of paint; however, decal must be permanent and may not be decal which may be easily removed on temporary basis. 1993 Miss. Op. Att'y Gen. 590.

Under Section 25-1-87, if the governing authorities of a municipality find and spread on the minutes that identifying marks on a particular police vehicle would hinder official criminal investigations by the police, then they may authorize that vehicle to be unmarked, subject to review by the State Auditor. However, this statute does not contemplate an unmarked vehicle being used for other than police purposes. 1995 Miss. Op. Att'y Gen. 351.

An economic development district, not being an economic development authority, is subject to the purchase laws of the State of Mississippi; trustees of a development district control funds collected for support of the district and may upon a majority vote approve properly submitted bills for payment; funds must be placed in the county depository at which the development district may have its own separate account; and there is no authority for a development district to provide meals for its appointed trustees at their meetings. 1998 Miss. Op. Att'y Gen. 816.

Governmental vehicles are required to have rear markings, whether by paint or decal, regardless of side markings. 1998 Miss. Op. Att'y Gen. 74.

A municipal mayor may not use an unmarked police vehicle to travel outside the municipality and around the state on municipal business. 1999 Miss. Op. Att'y Gen. 584.

Municipal governing authorities do not have authority to assign an unmarked police car to a mayor for use in performing duties for the municipality, as this section makes apparent that unmarked police cars must be used for police purposes. 2002 Miss. Op. Att'y Gen. 575.

Unless a specific police vehicle is designated as unmarked by the governing authority of a municipality, it must be marked in accordance with Miss. Code Ann. § 25-1-87. 2007 Miss. Op. Att'y Gen. 115, 2007 Miss. AG LEXIS 111.

§ 25-1-89. Donated automobiles.

Any institution of higher learning may own and operate a passenger automobile donated to it for use in the work of such institution by an individual or individuals.

HISTORY:

Codes, 1942, § 4061-09; Laws, 1950, ch. 448, § 9; Laws, 1962, ch. 497, § 11, eff from and after July 1, 1962.

Cross References —

Reports concerning state-owned automobiles, see § 25-1-81.

Exemption of state-owned automobiles from motor vehicle safety responsibility provisions, see § 63-15-5.

§ 25-1-91. Penalties regarding state-owned automobiles.

If any person shall knowingly and wilfully violate any of the provisions of Sections 25-1-77 through 25-1-93, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than two hundred fifty dollars and, in addition, shall be removed from the office or position which he holds.

HISTORY:

Codes, 1942, § 4061-10; Laws, 1950, ch. 448, § 10.

Cross References —

Reports concerning state-owned automobiles, see § 25-1-81.

Violation of provisions pertaining to use and markings of Department of Wildlife, Fisheries and Parks vehicles, punishable as provided in this section, see § 49-4-35.

Exemption of state-owned automobiles from motor vehicle safety responsibility provisions, see § 63-15-5.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-1-93. Provisions inapplicable to Governor.

It is herein expressly provided that no section, portion, or part of Sections 25-1-77 through 25-1-91 shall in any way be construed to apply to the Governor or to the governor's office of the State of Mississippi.

HISTORY:

Codes, 1942, § 4061-11; Laws, 1950, ch. 448, § 11.

Cross References —

Reports concerning state-owned automobiles, see § 25-1-81.

Exemption of state-owned automobiles from motor vehicle safety responsibility provisions, see § 63-15-5.

§ 25-1-95. Signature machines.

The Governor, Secretary of State, State Auditor, and Treasurer, who, in performing their respective official duties, sign their official names as such officers to various and divers documents and instruments, are hereby authorized to use in signing said instruments and documents a standard signature machine that will reproduce a facsimile signature of each such officer which, under modern methods, gives more protection than using pen and ink. The signature machine to be used by the aforesaid officers under the provisions of this section shall be selected by the Governor, Attorney General and Secretary of State.

The instrument signed by the aforesaid officers of the State of Mississippi, who shall sign official instruments and documents with a signature machine under and by virtue of the provisions herein contained, shall be taken and accepted in all courts and otherwise with the same force, effect, and validity as though the said officer who signed same with said signature machine had signed such instrument or document with his own hand.

Each officer authorized by this section to use a signature machine shall safely keep his facsimile signature in such a way as to prevent the use thereof by persons not authorized so to do.

The Governor is hereby authorized to permit any other official of the state to use a signature machine of the kind selected by the Governor, Attorney General and Secretary of State, if the necessity therefor should arise. It shall be the duty of each of the officials authorized to use said signature machine to keep his facsimile signature secure, and such officer shall be liable personally and on his official bond for any loss caused by his negligence in failing to keep secure his said facsimile signature.

Any person unlawfully using any signature machine provided for in this section, without the consent or direction of the officer whose facsimile signature is being so used, shall be guilty of forgery and punishable upon conviction thereof as provided by law in such cases.

HISTORY:

Codes, 1942, § 4065; Laws, 1938, ch. 160.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References —

Requirements for proper signatures generally, see § 1-3-61.

Imposition of standard state assessment in addition to all court imposed fine or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 25-1-97. State office hours.

The capitol commission of the state is hereby authorized and empowered to fix the hours for the opening and closing of public offices of the state commensurate with the seasons of the year. The business hours of all of the state public offices, departments, boards, commissions, and agencies shall be uniform, and said offices shall be open for business eight (8) hours per day Monday through Friday of each week except state holidays, with the capitol commission to set the opening and closing hours by its order from time to time. Nothing contained in this section shall be construed to prohibit any office, department, board, commission, or agency to conduct essential business outside of the regular business day hours where the executive head or governing body deems it necessary. For any state holiday fixed under Section 3-3-7, Mississippi Code of 1972, falling on a Saturday or Sunday, the following Monday may, in the discretion of the executive head or governing body of a state agency, be utilized in lieu of the legal holiday.

HISTORY:

Codes, 1942, § 8952.5; Laws, 1964, ch. 542, § 9, eff from and after 10 days after passage (approved June 11, 1964).

Cross References —

Office hours of Secretary of State, see § 7-3-3.

For statutory provisions fixing the normal business hours of all state offices, see § 25-1-98.

County office hours, generally, see § 25-1-99.

OPINIONS OF THE ATTORNEY GENERAL

A governing authority may adopt leave policies which allow extra leave to an employee whose regular day off falls on a holiday. 2003 Miss. Op. Att'y Gen. 735.

RESEARCH REFERENCES

CJS.

67 C.J.S., Officers, §§ 334–340.

§ 25-1-98. Opening and staffing of state offices; legal holidays, construction of "workday."

In addition to any other times required by statute, all state offices shall be open and staffed for the normal conduct of business from 8:00 a.m. until 5:00 p.m., Monday through Friday, except on legal holidays as set forth in Section 3-3-7. The Governor may designate certain state offices and institutions as providers of essential services and require that they be open and staffed on legal holidays. The Board of Directors of the Mississippi Industries for the Blind may, in its discretion, require that its offices and operations be open and staffed on legal holidays. Employees required to work on legal holidays shall earn compensatory leave under the provisions of Section 25-3-92. No employee shall receive additional vacation or sick leave benefits for working on a legal holiday, nor shall this section be construed to authorize any additional compensation as an alternative to the accrual of compensatory leave except as specifically provided for in a legislative appropriation. The provisions of this section shall not be construed to limit the hours of operation of any agency or to abrogate any action taken during hours other than those stated, nor shall these provisions apply to any offices that do not customarily stay open five (5) days a week. The provisions of this section shall not apply to the military department of the State of Mississippi or to the armories, field training sites, air bases or other installations of the Mississippi National Guard.

A workday for a state employee in a full-time employment position shall be eight (8) hours in duration at a minimum exclusive of time off for meals. The appointing authority shall develop work schedules which ensure that each full-time employee works a full workday and shall provide the State Auditor with a copy of the regular work schedule of the appointing authority.

HISTORY:

Laws, 1975, ch. 486, § 2; Laws, 1981, ch. 504, § 1; Laws, 1983, ch. 500, § 1; Laws, 1998, ch. 574, § 3, eff from and after July 1, 1998.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 1998, ch. 574, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

Cross References —

Applicability of definition of "workday" to provisions on vacation time and sick leave, see § 25-3-91.

Military department, see § 33-3-3.

National guard, see §§ 33-7-1 et seq.

Work schedule of members of state parole board, see § 47-7-5.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 25-1-98 applies to state employees working on holidays, but not to county employees. 1993 Miss. Op. Att'y Gen. 69.

§ 25-1-99. County office hours.

The clerks of the circuit and chancery courts, the county superintendents of education, the county tax assessors, and the sheriffs shall keep their offices at the courthouses of their respective counties if offices shall be there provided for them. If offices shall not be there provided for them, they shall keep their offices within one-half (½) mile of the courthouses of their respective counties; except that the office of the county superintendent of education may be placed in the county in any other place determined by the county board of education to be most feasible, regardless of the distance from the courthouse. The offices of all circuit and chancery clerks and sheriffs shall be open for business on all business days from 8:00 a.m. to 5:00 p.m., except that within the discretion of the board of supervisors of said county, the above county offices may be closed at 12:00 noon one (1) business day of each week, or may be closed all day Saturday of each week, or may be closed at 12:00 noon on Saturday and at 12:00 noon on one (1) additional business day of each week. Such courthouse hours decided upon within the discretion of the board of supervisors must be duly entered at large on the minutes of said board, and such action by the board shall be published in a newspaper having general circulation in the county once each week for four (4) consecutive weeks.

Provided, however, the courthouse shall be closed on all state holidays as set forth in Section 3-3-7, and when any state holiday set forth in Section 3-3-7 falls on a Saturday, the courthouse may be closed on the Friday immediately preceding such Saturday and when such holiday falls on a Sunday, the courthouse may be closed on the Monday immediately succeeding such

Sunday. The board of supervisors, in its discretion, may close the county offices on those holidays created by executive order of the Governor.

HISTORY:

Codes, Hutchinson's 1848, ch. 33, art 10 (1); 1857, ch. 6, art 190; 1871, § 313; 1880, § 419; 1892, § 3074; 1906, § 3482; Hemingway's 1917, § 2820; 1930, § 2916; 1942, § 4062; Laws, 1926, ch. 143; Laws, 1942, ch. 209; Laws, 1950, ch. 285; Laws, 1958, ch. 215, § 3; Laws, 1960, ch. 198; Laws, 1962, ch. 252; Laws, 1964, ch. 284; Laws, 1966, ch. 299, § 1; Laws, 1968, ch. 286, § 1; Laws, 1972, ch. 428, § 1; Laws, 1974, ch. 345; Laws, 1976, ch. 304; Laws, 1988, ch 350, § 6; Laws, 1988, ch. 386, eff from and after July 1, 1988.

Cross References —

Office hours of Secretary of State, see § 7-3-3.

State office hours, generally, see §§ 25-1-97, 25-1-98.

JUDICIAL DECISIONS

1. In general.

Under this statute, the county superintendent of education is required to keep his office in the courthouse if offices be there provided for him; it is only when an office is not provided in the courthouse that the county board of education has the power to determine where the offices of the county superintendent may be located. Tally v. Board of Supervisors, 307 So. 2d 553, 1975 Miss. LEXIS 1826 (Miss. 1975).

Where the courthouse and the office of the clerk were closed by authority of Code 1942, § 4062 on Saturday, the terminal day for giving an appeal bond from the judgment of the county court, and the clerk was not available in the courthouse on such day for filing and approving the appeal bond, that Saturday would not be counted in determining the 10 days within which an appeal had to be taken. Parkman v. Mississippi State Highway Com., 250 So. 2d 637, 1971 Miss. LEXIS 1188 (Miss. 1971).

Minutes of a board of supervisors are legally signed on the day following that fixed by law, where such day is a holiday. Gordon v. Monroe County, 244 Miss. 849, 147 So. 2d 126, 1962 Miss. LEXIS 515 (Miss. 1962).

A caption of the minutes of a board of supervisors that their meeting was held in the office of the chancery clerk does not import that the session was in fact held at the courthouse. State ex rel. Attorney Gen. v. Harris, 18 So. 123 (Miss. 1895).

OPINIONS OF THE ATTORNEY GENERAL

Statute does not state that Chancery Clerk may only conduct business between hours of 8:00 a.m. and 5:00 p.m. and actions taken by Chancery Clerk outside normal business hours are valid. 1993 Miss. Op. Att'y Gen. 345.

Offices of all circuit and chancery clerks and sheriffs must be open from 8:00 a.m. to 5:00 p.m. Monday through Friday; board of supervisors of each county has discretionary authority to provide, by order entered on minutes, that these offices be closed at 12:00 noon on one business day and open until 12:00 noon on Saturday; term "business days" in its ordinary usage and as used in statute means Monday through Friday, therefore, unless board of supervisors adopts order authorizing offices in question to close at 12:00 noon on one business day and requiring that they be open until 12:00 noon on Saturday, offices would be required to be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, excepting, State holidays. 1993 Miss. Op. Att'y Gen. 978.

Under stated facts, viz., the office of the school superintendent is located upon property owned by the school district, the board of supervisors is neither obligated nor required to pay to the school district any sums therefor. 1998 Miss. Op. Att'y Gen. 417.

The county board of supervisors has discretion to set the office hours during which the justice court clerk's offfice is to be open with a clerk present, and to provide for the location of the justice court offices. 2000 Miss. Op. Att'y Gen. 641.

The tax assessor in a county must maintain his main office within the statutory one-half mile of the courthouse if the office is not located within the courthouse itself; however, the tax assessor may also operate satellite offices outside of the statutory one-half mile in order to better serve the county. 2002 Miss. Op. Att'y Gen. 315.

The county tax assessor's office must be open for business on all business days from 8:00 a.m. to 5:00 p.m., except when the board of supervisors authorizes it to be closed at 12:00 noon one business day of each week, or all day Saturday of each week, or at 12:00 noon on Saturday and at 12:00 noon on one additional business day of each week. 2002 Miss. Op. Att'y Gen. 315.

RESEARCH REFERENCES

CJS.
67 C.J.S., Officers, §§ 334–340.

§ 25-1-100. Certain personnel records exempt from public access requirements; exceptions.

(1) Personnel records and applications for employment in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, except those which may be released to the person who made the application or with the prior written consent of the person who made the application, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Test questions and answers in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are to be used in employment examinations, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(3) Letters of recommendation in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, respecting any application for employment, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(4) Documents relating to contract authorization under Section 25-9-120 shall not be exempt from the provisions of Mississippi Public Records Act of 1983.

(5) Contracts for personal and professional services that are awarded or executed by any state agency, including, but not limited to, the Department of Information Technology Services and the Department of Transportation, shall not be exempt from the Mississippi Public Records Act of 1983.

HISTORY:
Laws, 1983, ch. 424, § 12; Laws, 1994, ch. 401, § 2; Laws, 2015, ch. 431, § 3, eff from and after July 1, 2015.

Cross References —
Mississippi Public Records Act of 1983 generally, see §§ 25-61-1 et seq.

Exemption of confidential information furnished by third parties from public access requirements, see § 25-61-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. "Comp time."

1. In general.
Where the Harrison County Development Commission (HCDC), a political subdivision of the State of Mississippi, willfully and knowingly denied a county citizen access to certain records related to a planned development (in part, by unilaterally requiring fees that were not part of its policy), and which were not exempt under the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1 to Miss. Code Ann.§ 25-61-17, it was properly ordered to produce those records not specifically exempt, and pay a civil penalty, as well as attorney's fees. Pursuant to Miss. Code Ann. § 25-61-9(2), HCDC should have separated information on its director's salary and leave time (subject to disclosure), from his personnel file and disclosed any non exempt material; further, the information on its business partners or prospects were not confidential and were subject to disclosure, and therefore, it was

not entitled to a protective order per Miss. R. Civ. P. 26(d). Harrison County Dev. Comm'n v. Kinney, 920 So. 2d 497, 2006 Miss. App. LEXIS 51 (Miss. Ct. App. 2006).

Records of accrued compensation time of employees of a state agency are not exempt from disclosure under this section. Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n, 1999 Miss. LEXIS 67 (Miss. Feb. 4, 1999), opinion withdrawn by, substituted opinion at 740 So. 2d 925, 1999 Miss. LEXIS 255, 140 Lab. Cas. (CCH) P58844 (Miss. 1999).

2. "Comp time."

Records of accumulated "comp time" for public employees is not exempt from disclosure under exemption for personnel records. Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n, 740 So. 2d 925, 1999 Miss. LEXIS 255 (Miss. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Personnel records, in broad generic terms, include evaluations, applications for employment, recommendations submitted with applications, complaints made against a teacher, disciplinary measures contemplated or taken against a teacher, and medical records, and most of these records are routinely kept in a personnel file and are not subject to disclosure. 1992 Miss. Op. Att'y Gen. 379.

Names and compensation of employees of public bodies must be made available pursuant to the Public Records Act, and any existing list of employees' resident addresses is public record, though the public entity is not required to go into personnel files to compile this information. 1992 Miss. Op. Att'y Gen. 379.

An applicant for employment as a law enforcement officer must give prior written permission to release his/her personnel files before a public body may release any such files. 1998 Miss. Op. Att'y Gen. 250.

If the member of a municipal governing body seeking to review personnel records has need, in the course and scope of his or her duties on behalf of the municipality, to review them, he or she should be entitled to such a review. 2004 Miss. Op. Att'y Gen. 683.

The names, salaries and length of service of municipal personnel are not "personnel records" which would render that information exempt from disclosure pursuant to this section. 2004 Miss. Op. Att'y Gen. 242.

Municipal governing authorities may adopt and enforce policies with regard to removal of documentation of disciplinary actions from employee personnel files; however, care should be taken that any removal of otherwise public information from city records is not done for the purpose of subverting the intent of the Mississippi Public Records Act of 1983. 2005 Miss. Op. Att'y Gen. 97.

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. 2007 Miss. Op. Att'y Gen. 119, 2007 Miss. AG LEXIS 71.

§ 25-1-101. State-furnished books.

Every justice of the peace, or other officer to whom the statute laws or other books may be furnished by the state, shall carefully preserve the same and, at the expiration of his term, deliver them to his successor, take his receipt therefor, and file the same in the office of the clerk of the circuit court. In default thereof, the said court, on motion of the clerk or of the successor in office, whose duty it shall be to make such motion, shall enter judgment in favor of the state against the justice or other officer in default for the sum of Ten Dollars ($10.00) for each volume missing and not satisfactorily accounted for, five (5) days' notice being given of such motion.

HISTORY:

Codes, 1857, ch. 6, art 203; 1871, § 326; 1880, § 421; 1892, § 3075; 1906, § 3483; Hemingway's 1917, § 2821; 1930, § 2917; 1942,

§ 4063.

Editor's Notes —
Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References —
Duty of justice court judge leaving office to deliver docket to clerk of circuit court, see § 9-11-25.

Penalty for failure of public officer to deliver books and records to successor, see § 97-11-27.

RESEARCH REFERENCES

CJS.
67 C.J.S., Officers and Public Employees § 193.

§ 25-1-102. Certain attorneys' work product exempt from public access requirements.

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which represent and constitute the work product of any attorney, district attorney or county prosecuting attorney representing a public body and which are related to litigation made by or against such public body, or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney-client relationship, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

HISTORY:
Laws, 1983, ch. 424, § 13, eff from and after July 1, 1983.

Cross References —
Mississippi Public Records Act of 1983 generally, see §§ 25-61-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

A sewer district is a public corporation and a body politic and as such its records are public records. However, any records which constitute the work product of an attorney or attorney-client privileged records are exempt from the Mississippi public Records Act. 2004 Miss. Op. Att'y Gen. 170.

§ 25-1-103. Certain offices held by same person.

The offices of the clerk of the circuit and chancery courts may be held by the same person, in the discretion of the board of supervisors, in a county of not exceeding fifteen thousand (15,000) inhabitants.

HISTORY:
Codes, 1857, ch. 6, art 199; 1871, § 322; 1880, § 418; 1892, § 3073; 1906, § 3481; Hemingway's 1917, § 2819; 1930, § 2918; 1942, § 4064; Laws, 1968, ch. 361, § 4, eff from and after January 1, 1972.

Cross References —
Authority of Legislature to determine mode of filling vacancies in offices and to define powers of offices, see Miss. Const. Art. 4, § 103.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 A.L.R.3d 1230.

CJS.
67 C.J.S., Officers §§ 37-45, 339.

§ 25-1-105. Application of prohibition against striking to public employees and employers.

All provisions of Section 37-9-75 prohibiting strikes by teachers and teacher organizations and providing penalties therefor, and providing certain responsibilities for members of local school governing boards and school administrators shall likewise apply as far as is practicable to all public employees and public employers respectively.

For purposes of this section, "public employee" means any person holding a position by employment, contract or appointment with a public employer; and

"Public employer" means any governmental entity in this state whose employees are paid in whole or in part by funds appropriated or otherwise provided by the state.

HISTORY:

Laws, 1985, ch. 351, § 32, eff from and after May 1, 1985.

OPINIONS OF THE ATTORNEY GENERAL

Because a county development foundation, a separate corporate entity, is neither a state agency, political subdivision nor instrumentality thereof, its employees would not be entitled to membership in the Public Employees' Retirement System. Also, because the employees of the foundation are not employees of the County, the would not be entitled to the benefits the county offers its employees. 2004 Miss. Op. Att'y Gen. 482.

RESEARCH REFERENCES

ALR.

Validity of public utility anti-strike laws and regulations. 22 A.L.R.2d 894.

Applicability of Norris-La Guardia Act and similar state statutes to injunction action by governmental unit or agency. 29 A.L.R.2d 431.

Union organization and activities of public employees. 31 A.L.R.2d 1142.

Labor law: Right of public employees to strike or engage in work stoppage. 37 A.L.R.3d 1147.

Bargainable or negotiable issues in state public employment labor relations. 84 A.L.R.3d 242.

Damage liability of state or local public employees' union or union officials for unlawful work stoppage. 84 A.L.R.3d 336.

What constitutes unfair labor practice under state public employee relations acts. 9 A.L.R.4th 20.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees. 22 A.L.R.4th 1103.

Lawyers' Edition.

Damages liability of union or its members in suit under 29 USCS § 185 for breach of express or implied no-strike obligation of collective bargaining agreement–federal cases. 68 L. Ed. 2d 884.

Law Reviews.

Public Sector Collective Bargaining in Mississippi: An Argument for Acceptance. 56 Miss. L. J. 379, August, 1986.

§ 25-1-107. Date of postmark as proof of date of payment or report.

Except as otherwise specifically provided by law, whenever any check, money order or other form of payment or reports is required to be made to any state agency or any county, municipality or other political subdivision of the state by or before a certain date and the mailing is made by United States mail, then the date that the mail containing the payment or report is postmarked by the United States Post Office shall be considered as the date the payment or report is made. The date of the United States Post Office postmark is proof of the date of payment or report if the payment or report was mailed with postage paid and was correctly addressed.

HISTORY:

Laws, 1995, ch. 305, § 1, eff from and after July 1, 1995.

OPINIONS OF THE ATTORNEY GENERAL

A notice of withdrawal from a development district was not timely where the notice was metered, postmarked, and received after the deadline for such notices, even though the letter was dated before the deadline. 2002 Miss. Op. Att'y Gen. 180.

§ 25-1-109. Law enforcement officers prohibited from disclosing identity of person arrested, issued a citation, or being held for misdemeanor.

No law enforcement agency shall disclose the name of any person arrested for any misdemeanor, issued a citation, or being held for any misdemeanor unless such person shall be formally charged and arrested for the offense, except to other law enforcement agencies or to the Mississippi Department of Human Services or child day care providers where such information is used to help determine suitability of persons to serve as child care providers or child service workers. No political subdivision nor any employee thereof shall be held liable for the disclosure of any information prohibited by this section.

HISTORY:

Laws, 1997, ch. 550, § 5, eff from and after July 1, 1997.

§ 25-1-111. Prevention of disclosure by state agencies of social security numbers.

When any state agency mails, delivers, circulates, publishes, distributes, transmits, or otherwise disseminates, in any form or manner, information or material that contains the social security number of an individual, the agency shall take such steps as may be reasonably necessary to prevent the inadvertent disclosure of the individual's social security number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's social security number. State agencies shall be in compliance with this section on or before July 1, 2003.

HISTORY:
Laws, 2002, ch. 609, § 1, eff from and after July 1, 2002.

OPINIONS OF THE ATTORNEY GENERAL

The tax assessor-collector may provide the sheriff with a list of those property owners who were granted homestead exemption, which list may include the social security number and the birth date of the taxpayer. Such information must remain confidential and cannot be disclosed by the sheriff to the general public. 2002 Miss. Op. Att'y Gen. 659.

The secretary of state may lawfully promulgate a rule requiring that Uniform Commercial Code filings not contain any Social Security numbers and providing for rejection when they do. 2006 Miss. Op. Att'y Gen. 348.

§ 25-1-113. Public employment of persons convicted of embezzlement of public funds prohibited.

(1) From and after July 1, 2013, the state and any county, municipality or any other political subdivision shall not employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment.

(2) From and after July 1, 2014, the state and any county, municipality or any other political subdivision shall not employ or continue to employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment.

HISTORY:
Laws, 2013, ch. 528, § 1; Laws, 2014, ch. 343, § 1, eff from and after passage (approved March 14, 2014).

§ 25-1-115. Certain persons prohibited from serving on executive committees.

(1) No person shall serve on any temporary municipal executive committee, municipal executive committee, temporary county executive committee, county executive committee or state executive committee if the person has been convicted of any criminal violation of the Mississippi Election Code, has been convicted of an election crime in this state or any other state, has been convicted of any felony in this state or any other state, has been convicted of an election crime under federal law, has been removed from public office pursuant to Section 25-5-1, or who has resigned from office as part of a plea agreement.

(2) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in Section 99-19-31 and removed from the committee.

HISTORY:

Laws, 2013, ch. 391, § 1; Laws, 2014, ch. 378, § 1, eff from and after July 1, 2014.

Editor's Notes —

The effective date of Chapter 391, Laws of 2013, which added this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 391, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated August 1, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 391 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 391, so Chapter 391 became effective from and after August 1, 2013, the date of the United States Attorney General's response letter.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-1-117. State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information.

Each state agency and each statewide elected official that provides information to the public about the agency or office on a website on the Internet shall review and update the information on the website on a regular basis, not less frequently than once a month, to ensure that the information appearing on the website is current and that outdated information has been removed or placed in a separate section of archived information.

HISTORY:

Laws, 2013, ch. 369, § 1, eff from and after July 1, 2013.

§ 25-1-119. Public bodies, employees, and officers prohibited from creating, planning, participating in, enabling, etc., sanctuary policies.

(1) No state agency, department, political subdivision of this state, county, municipality, university, college, community college or junior college, or any agent, employee or officer thereof shall adopt, or implement a policy, order or ordinance that (a) limits or prohibits any person from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any person; or (b) grants to any person the right to lawful presence or status within the state, a county or municipality, or the campus of a university, college, community college or junior college in violation of state or federal law.

(2) Any policy, order or ordinance adopted in violation of this section shall

be invalid and void from the date of its adoption or enactment and shall have no force or effect.

HISTORY:

Laws, 2017, ch. 383, § 1, eff from and after passage (approved Mar. 27, 2017).

CHAPTER 3.

SALARIES AND COMPENSATION

General Provisions. 25-3-1
Vacation Time and Sick Leave. 25-3-91

GENERAL PROVISIONS

Sec.
25-3-1. Classifications of counties.
25-3-2. Elected county official's salary reductions due to valuation and population changes.
25-3-3. Salaries of assessors also serving as tax collectors; additional compensation.
25-3-5. Repealed.
25-3-7. State contribution to compensation of assessors.
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25-3-19. Salaries of county auditors.
25-3-21. Allowance for copying assessment rolls.
25-3-23. Deputy chancery clerk in certain counties.
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25-3-33. Repealed.
25-3-34. Education benchmarks for appointive state and district officials.
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25-3-39.1. Compensation of Deputy Commissioner of Insurance.
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25-3-47. Department subordinates.
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25-3-53. Compensation of special judges of circuit, county, or chancery courts.
25-3-55. Compensation of special judge of Supreme Court.
25-3-57. Deduction for absence from court.
25-3-59. Deduction for absence from meeting of public service commission.
25-3-61. Governor may grant leave of absence.
25-3-63 and 25-3-65. Repealed.
25-3-67. Deductions from municipal employees' salaries for contributions for United Way, insurance, and United States Savings Bonds.

Sec.	
25-3-69.	Uniform per diem compensation for officers and employees of state boards, commissions and agencies.
25-3-71.	Annual report of recommendations of salary increases and amounts.
25-3-73.	Repealed.

§ 25-3-1. Classifications of counties.

For the purposes of this chapter the counties are divided into eight (8) classes, numbered from One to Eight, according to the 1930 total assessed valuation of the real, personal, and public service corporation property of each county, as follows:

Class Number One. — Shall be composed of all counties in which the assessed valuation equals and exceeds Twenty-five Million Dollars ($25,000,000.00).

Class Number Two. — Shall be composed of all counties in which the assessed valuation equals and exceeds Twenty Million Dollars ($20,000,000.00) and is less than Twenty-five Million Dollars ($25,000,000.00).

Class Number Three. — Shall be composed of all counties in which the assessed valuation equals and exceeds Fifteen Million Dollars ($15,000,000.00) and is less than Twenty Million Dollars ($20,000,000.00).

Class Number Four. — Shall be composed of all counties in which the assessed valuation equals and exceeds Ten Million Dollars ($10,000,000.00) and is less than Fifteen Million Dollars ($15,000,000.00).

Class Number Five. — Shall be composed of all counties in which the assessed valuation equals and exceeds Eight Million Dollars ($8,000,000.00) and is less than Ten Million Dollars ($10,000.000.00).

Class Number Six. — Shall be composed of all counties in which the assessed valuation equals and exceeds Six Million Dollars ($6,000,000.00) and is less than Eight Million Dollars ($8,000,000.00).

Class Number Seven. — Shall be composed of all counties in which the assessed valuation equals and exceeds Three Million Dollars ($3,000,000.00) and is less than Six Million Dollars ($6,000,000.00).

Class Number Eight. — Shall be composed of all counties in which the assessed valuation is less than Three Million Dollars ($3,000,000.00).

The assessed value of each county shall be determined by the amounts certified to the State Tax Commission by the clerk of the board of supervisors, the assessed value of all public service corporations as certified by the State Tax Commission, and, in counties where oil or gas is produced, the actual value of such oil at the point of production as certified to the counties by the State Tax Commission under the provisions of Sections 27-25-501 through 27-25-525, and the actual value of such gas at the point of production as certified by the State Tax Commission under the provisions of Sections 27-25-701 through 27-25-723; provided, however, that the actual value of oil or gas at the point of production in counties where oil or gas is produced shall not be included in the assessed value of such county in determining the classification of such county in the fixing of fees to tax collectors under Section 25-7-21.

In any year the assessed value of a county shows that its class has changed to a higher class, such county shall remain in its original class until the succeeding January first and then be classed according to such assessed value.

Nothing in this section shall be construed to lower the classification of any county from its classification under the assessment of 1930.

HISTORY:

Codes, 1930, § 6498; 1942, § 4159; Laws, 1922, ch. 163; Laws, 1928, ch. 89; Laws, 1930, ch. 83; Laws, 1944, ch. 192; Laws, 1950, ch. 280, §§ 1, 2; Laws, 1960, ch. 199; Laws, 1997, ch. 570, § 11, eff October 1, 1997.

Editor's Notes —

Laws of 1997, ch. 570, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 570, § 11.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the "Class Number Three" paragraph was corrected by substituting "...assessed valuation equals and exceeds..." for "...assessed valuation equals and exceed..."

Cross References —

Limitation of county size, see Miss. Const. Art. 14, § 260.

Salaries of county judges determined by county classifications, see § 9-9-11.

Fees of chancery clerks being determined by county classification, see § 25-7-9.

JUDICIAL DECISIONS

1. In general.

Assuming that board of supervisors of county which was one of the fourth class in 1930 and had an assessed valuation of a county of the third class in 1942, made unauthorized and excessive allowance as to county auditor's salary for the year 1942 in basing it on classification as a third class county, neither members of the board, nor their bondsmen, could be held personally liable for the reason that the allowance was to an object authorized by law. Barnett v. Woods, 196 Miss. 678, 18 So. 2d 443, 1944 Miss. LEXIS 249 (Miss. 1944).

County, which was in the fourth class in 1930 and had an assessed valuation of a third class county in 1942, was authorized to allow its auditor a salary of $2,300 for the year 1942 pursuant to this section which provides for change in classification of county for the purpose of determining salaries based upon change in assessed valuation. Barnett v. Woods, 196 Miss. 678, 18 So. 2d 443, 1944 Miss. LEXIS 249 (Miss. 1944).

Surety on bonds of board of supervisors of county in class five was liable to county for $60 paid as salaries to board in November, 1930, where at that time each member had been allowed sum above $1,000, though less than $1,250, maximum compensation allowable for first ten months. United States Fidelity & Guaranty Co. v. Gully, 168 Miss. 740, 150 So. 828, 1933 Miss. LEXIS 196 (Miss. 1933).

Salaries due board of supervisors of county in class five for services rendered prior to November 1, 1930, not exceeding $1,250, could be allowed after November 1, though in excess of $1,000, maximum compensation allowable after that time. United States Fidelity & Guaranty Co. v. Gully, 168 Miss. 740, 150 So. 828, 1933 Miss. LEXIS 196 (Miss. 1933).

OPINIONS OF THE ATTORNEY GENERAL

Any public official or employee whose pay schedule is not determined in Sections 25-3-1 through 25-3-27, may be paid bi-weekly. Officials who are not required to be paid monthly may be paid on some other basis in the discretion of the board of supervisors. 1996 Miss. Op. Att'y Gen. 489.

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 429 et seq.

CJS.
20 C.J.S., Counties § 8.

§ 25-3-2. Elected county official's salary reductions due to valuation and population changes.

No county elected official's annual salary established under this chapter shall be reduced during his term of office as a result of a reduction in total assessed valuation or a change in population.

HISTORY:
Laws, 1998, ch. 567, § 4, eff from and after October 1, 1998.

Editor's Notes —
Laws of 1998, ch. 567, § 6, provides:
"SECTION 6. This act shall take effect and be in force from and after October 1, 1998, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, after October 1, 1998, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 30, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1998, ch. 567, § 4.

§ 25-3-3. Salaries of assessors also serving as tax collectors; additional compensation.

(1) The term "total assessed valuation" as used in this section only refers to the ad valorem assessment for the county and, in addition, in counties where oil or gas is produced, the actual value of oil at the point of production, as certified to the counties by the State Tax Commission under the provisions of Sections 27-25-501 through 27-25-525, and the actual value of gas as certified by the State Tax Commission under the provisions of Sections 27-25-701 through 27-25-723.

(2) The salary of assessors and collectors of the various counties is fixed as full compensation for their services as county assessors or tax collectors, or both if the office of assessor has been combined with the office of tax collector. The annual salary of each assessor or tax collector, or both if the offices have been combined, shall be based upon the total assessed valuation of his respective county for the preceding taxable year in the following categories and for the following amounts:

(a) For counties having a total assessed valuation of Two Billion Dollars ($2,000,000,000.00) or more, a salary of Sixty-four Thousand Dollars ($64,000.00);

(b) For counties having a total assessed valuation of at least One Billion Dollars ($1,000,000,000.00) but less than Two Billion Dollars ($2,000,000,000.00), a salary of Sixty-one Thousand Five Hundred Dollars ($61,500.00);

(c) For counties having a total assessed valuation of at least Five Hundred Million Dollars ($500,000,000.00) but less than One Billion Dollars

($1,000,000,000.00), a salary of Fifty-eight Thousand Five Hundred Dollars ($58,500.00);

(d) For counties having a total assessed valuation of at least Two Hundred Fifty Million Dollars ($250,000,000.00) but less than Five Hundred Million Dollars ($500,000,000.00), a salary of Fifty-six Thousand Dollars ($56,000.00);

(e) For counties having a total assessed valuation of at least One Hundred Fifty Million Dollars ($150,000,000.00) but less than Two Hundred Fifty Million Dollars ($250,000,000.00), a salary of Fifty-four Thousand Dollars ($54,000.00);

(f) For counties having a total assessed valuation of at least Seventy-five Million Dollars ($75,000,000.00) but less than One Hundred Fifty Million Dollars ($150,000,000.00), a salary of Fifty-two Thousand Five Hundred Dollars ($52,500.00);

(g) For counties having a total assessed valuation of at least Thirty-five Million Dollars ($35,000,000.00) but less than Seventy-five Million Dollars ($75,000,000.00), a salary of Forty-eight Thousand Five Hundred Dollars ($48,500.00);

(h) For counties having a total assessed valuation of less than Thirty-five Million Dollars ($35,000,000.00), a salary of Forty-one Thousand Five Hundred Dollars ($41,500.00).

(3) In addition to all other compensation paid pursuant to this section, the board of supervisors shall pay to a person serving as both the tax assessor and tax collector in their county an additional Five Thousand Dollars ($5,000.00) per year.

(4) The annual salary established for assessors and tax collectors shall not be reduced as a result of a reduction in total assessed valuation. The salaries shall be increased as a result of an increase in total assessed valuation.

(5) In addition to all other compensation paid to assessors and tax collectors in counties having two (2) judicial districts, the board of supervisors shall pay such assessors and tax collectors an additional Three Thousand Five Hundred Dollars ($3,500.00) per year. In addition to all other compensation paid to assessors or tax collectors, in counties maintaining two (2) full-time offices, the board of supervisors shall pay the assessor or tax collector an additional Three Thousand Five Hundred Dollars ($3,500.00) per year.

(6) In addition to all other compensation paid to assessors and tax collectors, the board of supervisors of a county shall allow for such assessor or tax collector, or both, to be paid additional compensation when there is a contract between the county and one or more municipalities providing that the assessor or tax collector, or both, shall assess or collect taxes, or both, for the municipality or municipalities; and such assessor or tax collector, or both, shall be authorized to receive such additional compensation from the county and/or the municipality or municipalities in any amount allowed by the county and/or the municipality or municipalities for performing those services.

(7) When any tax assessor holds a valid certificate of educational recognition from the International Association of Assessing Officers or is a licensed appraiser

under Section 73-34-1 et seq., he shall receive an additional One Thousand Five Hundred Dollars ($1,500.00) annually beginning the next fiscal year after completion. When any tax assessor is a licensed state certified Residential Appraiser (RA) or licensed state certified Timberland Appraiser (TA) under Section 73-34-1 et seq., or when any tax assessor holds a valid designation from the International Association of Assessing Officers as a Cadastral Mapping Specialist (CMS) or Personal Property Specialist (PPS) or Residential Evaluation Specialist (RES), he shall receive an additional Six Thousand Five Hundred Dollars ($6,500.00) annually beginning the next fiscal year after completion. When any tax assessor holds the valid designation of Certified Assessment Evaluator (CAE) from the International Association of Assessing Officers or is a state certified General Real Estate Appraiser (GA) under Section 73-34-1 et seq., he shall receive an additional Eight Thousand Five Hundred Dollars ($8,500.00) annually beginning the next fiscal year after completion.

(8) The salaries provided for in this section shall be the total funds paid to the county assessors and tax collectors and shall be full compensation for their services, with any fees being paid to the county general fund.

(9) The salaries provided for in this section shall be payable monthly on the first day of each calendar month by chancery clerk's warrant drawn on the general fund of the county; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

HISTORY:

Codes, 1942, § 4160-01; Laws, 1968, ch. 369, § 7; Laws, 1970, ch 401, §§ 1 and 2; Laws, 1974, ch. 349; Laws, 1977, ch. 443; Laws, 1980, ch. 497, § 1; Laws, 1983, ch. 526, § 1; Laws, 1985, ch. 513, § 1; Laws, 1988, ch. 433, § 1; Laws, 1989, ch. 335, § 1; Laws, 1990, ch. 314, § 1; Laws, 1991, ch. 382, § 1; Laws, 1993, ch. 550, § 3; Laws, 1997, ch. 570, § 1; Laws, 2004, ch. 505, § 1, eff October 1, 2004.

Editor's Notes —

The United States Attorney General, by letter dated May 27, 1993, interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1993, ch. 550, § 3.

Laws of 1997, ch. 570, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 570, § 1.

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 505, § 1.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 73-34-19 was amended by Section 1 of Chapter 400, Laws of 2014, effective July 1, 2014, to delete the timberland real estate appraiser license classification referred to in subsection (7).

Cross References —

Certified residential appraiser, certified timberland appraiser and certified general appraiser, see § 73-34-19.

OPINIONS OF THE ATTORNEY GENERAL

County tax collectors are entitled to be paid additional compensation for collecting city taxes on motor vehicles if they are collecting such taxes by virtue of written contract or interlocal agreement between county and municipality or municipalities in county and if there is not effective municipal order requiring collection of such taxes by county tax collector as authorized by Section 27-51-29. 1993 Miss. Op. Att'y Gen. 460.

The plain language of Section 25-3-3 allows a board of supervisors, in its discretion, to pay an assessor-tax collector an additional $3,500.00 when that assessor-tax collector maintains two full-time offices. 1996 Miss. Op. Att'y Gen. 808.

The term "total assessed valuation" in §§ 25-3-3 and 25-3-9 includes the assessed valuation of any properties for which a fee in lieu of taxes has been negotiated pursuant to § 27-31-104. 1999 Miss. Op. Att'y Gen. 134.

Where a board of supervisors is given the discretion to allow an additional $3,500.00 compensation to an assessor-collector who maintains two full-time offices, the board has discretion to allow a lesser amount. 2002 Miss. Op. Att'y Gen. 230.

RESEARCH REFERENCES

CJS.
20 C.J.S., Counties §§ 174, 175.
67 C.J.S., Officers § 321.

§ 25-3-5. Repealed.

Repealed by Laws, 2004, ch. 505, § 14, eff from and after August 19, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section.)

[Codes, 1942 § 4160-02; Laws, 1968, ch. 369, § 12; Laws, 1974, ch. 368; Laws, 1977, ch. 469; Laws, 1980, ch. 497, § 2; Laws, 1983, ch. 526, § 2; Laws, 1985, ch. 513, § 2; Laws, 1988, ch. 433, § 2; Laws, 1989, ch. 335, § 2; Laws, 1990, ch. 314, § 2; Laws, 1991, ch. 382, § 2; Laws, 1993, ch. 550, § 4; Laws, 1997, ch. 570, § 2, eff October 1, 1997; Laws, 2004, ch. 505, § 14, eff from and after August 19, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section.)]

Editor's Notes —
Former § 25-3-5 was entitled: Salaries of assessors and tax collectors in separate offices; additional compensation.

§ 25-3-7. State contribution to compensation of assessors.

From the state treasury shall be paid up to one fourth (¼) of the salary of each county assessor, but in no instance shall the payment exceed the figure paid for the fiscal year of 1970-1971 to the assessor, whether or not the offices of assessor and tax collector are combined.

HISTORY:
Codes, 1880, § 463; 1892, § 2017; 1906, § 2193; 1930, § 6501; 1942, § 4163; Laws, 1882, p 82; 1884, p 17; 1898 p 47; Laws, 1910, ch. 193; Laws, 1930, ch. 170; Laws, 1932, ch. 193; Laws, 1968, ch. 369, § 18, eff from and after the first Monday in January, 1972.

OPINIONS OF THE ATTORNEY GENERAL

No authority can be found for an information technology services board member to hold over and continue to serve after the expiration of his or her term of office. 2006 Miss. Op. Att'y Gen.

125.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 429 et seq.

§ 25-3-9. Salaries of county prosecuting attorneys.

(1) Except as provided in subsections (2), (3) and (4) of this section, the county prosecuting attorney may receive for his services an annual salary to be paid by the board of supervisors as follows:

(a) For counties with a total population of more than two hundred thousand (200,000), a salary not to exceed Twenty-eight Thousand Five Hundred Dollars ($28,500.00).

(b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), a salary not to exceed Twenty-six Thousand Five Hundred Dollars ($26,500.00).

(c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), a salary not to exceed Twenty-one Thousand Seven Hundred Dollars ($21,700.00).

(d) For counties with a total population of more than thirty-five thousand (35,000) and not more than fifty thousand (50,000), a salary not to exceed Twenty Thousand Four Hundred Dollars ($20,400.00).

(e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), a salary not to exceed Nineteen Thousand Three Hundred Dollars ($19,300.00).

(f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), a salary not to exceed Seventeen Thousand Seven Hundred Dollars ($17,700.00).

(g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), a salary not to exceed Sixteen Thousand One Hundred Dollars ($16,100.00).

(h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), a salary not to exceed Fourteen Thousand Five Hundred Dollars ($14,500.00).

(i) For counties with a total population of six thousand (6,000) or less, the board of supervisors, in its discretion, may appoint a county prosecuting attorney, and it may pay such county prosecuting attorney an annual salary not to exceed Twelve Thousand Nine Hundred Dollars ($12,900.00).

In all cases of conviction there shall be taxed against the convicted defendant, as an item of cost, the sum of Three Dollars ($3.00), which shall be turned in to the county treasury as a part of the general county funds; however, the Three Dollars ($3.00) shall not be taxed in any case in which it is not the specific duty of the county attorney to appear and prosecute.

From and after October 1, 1993, in addition to the salaries provided for in this subsection, the board of supervisors of any county, in its discretion, may pay the county prosecuting attorney an additional amount not to exceed ten percent (10%) of the maximum allowable salary prescribed herein.

(2) In the following counties, the county prosecuting attorney shall receive for his services an annual salary to be paid by the board of supervisors, as follows:

(a) In any county bordering upon the Mississippi River and having a population of not less than thirty thousand (30,000) and not more than thirty-five thousand five hundred (35,500) according to the federal census of 1990, and in counties having a population of not more than thirty-seven thousand (37,000) according to the federal census of 1990 in which Interstate Highway 55 and U.S. Highway 98 intersect, the county prosecuting attorney shall receive a salary equal to the justice court judge of such county; and in any county wherein is located the state's oldest state-supported institution of higher learning and wherein Mississippi State Highways 7 and 6 intersect, the county prosecuting attorney shall receive an annual salary equal to that of a member of the board of supervisors of such county.

(b) In counties having a population in excess of fifty thousand (50,000) in the 1960 federal census, wherein is located a state-supported university and in which U.S. Highways 49 and 11 intersect, the salary of the county prosecuting attorney shall be not less than Seventeen Thousand Four Hundred Dollars ($17,400.00) per year. The Board of Supervisors of Forrest County, Mississippi, may, in its discretion, and by agreement with the county prosecuting attorney, employ the county prosecuting attorney as a full-time elected official during his/her term of office, designate additional duties and responsibilities of the office and pay additional compensation up to, but not in excess of, ninety percent (90%) of the annual compensation and salary of the county court judge and the youth court judge of Forrest County as authorized by law and provide a reasonable office and reasonable office expenses to the county prosecuting attorney. The salary authorized by this paragraph (b) for the county prosecuting attorney shall be the sole and complete salary for such prosecuting attorney in each county to which this paragraph applies, notwithstanding any other provision of law to the contrary.

(c) In any county wherein is housed the seat of state government, wherein U.S. Highways 80 and 49 intersect, and having two (2) judicial districts, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of members of the board of supervisors in the county.

(d) In any county which has two (2) judicial districts and wherein Highway 8 and Highway 15 intersect, having a population of greater than seventeen thousand (17,000), according to the 1980 federal decennial census, the board of supervisors shall pay the county prosecuting attorney a salary equal to that of a member of the board of supervisors of such county; provided that if such county prosecuting attorney is paid a sum for the purpose of defraying office or secretarial expenses, then the salary prescribed herein shall be reduced by that amount.

(e) In any county bordering the State of Tennessee and in which Mississippi Highways No. 4 and 15 intersect, and having a population of less than twenty thousand (20,000) in the 1970 federal census, the salary of the county prosecuting attorney shall be no less than Six Thousand Dollars ($6,000.00).

(f) In any county having a population of more than twenty-five thousand (25,000) and in which U.S. Highways 72 and 45 intersect, the salary of the county attorney shall be not less than Eight Thousand Dollars ($8,000.00).

In addition, such county prosecuting attorney shall receive the sum of One Thousand Five Hundred Dollars ($1,500.00) per month for the purpose of defraying secretarial expense.

(g) In any county wherein I-20 and State Highway 15 intersect; and in any county wherein I-20 and State Highway 35 intersect, the salary of the county prosecuting attorney shall be not less than Eight Thousand Four Hundred Dollars ($8,400.00).

(h) In any Class 1 county bordering on the Mississippi River, lying in whole or in part within a levee district, wherein U.S. Highways 82 and 61 intersect, bounded by the Sunflower River and Stales Bayou, the board of supervisors, in its discretion, may pay an annual salary equal to the annual salary of members of the board of supervisors in the county. In addition, such county prosecuting attorney shall receive the sum of One Thousand Dollars ($1,000.00) per month for the purpose of defraying secretarial expenses.

(i) In any county bordering on the Gulf of Mexico having two (2) judicial districts, and wherein U.S. Highways 90 and 49 intersect, the salary of the county prosecuting attorney shall be not less than Nineteen Thousand Dollars ($19,000.00) per year. The Board of Supervisors of Harrison County, Mississippi, may, in its discretion, and by agreement with the county prosecuting attorney, employ the county prosecuting attorney and his/her assistant during his/her term of office, and designate additional duties and responsibilities of the office and pay additional compensation up to, but not in excess of, ninety percent (90%) of the annual compensation and salary of the county court judges of Harrison County as authorized by law and provide adequate office space and reasonable office expenses to the county prosecuting attorney and his/her assistant. The salary authorized by this paragraph (i) for the county prosecuting attorney and his/her assistant shall be the sole and complete salary paid by the county for such prosecuting attorney and his/her assistant in each county to which this paragraph applies, notwithstanding any other provision of law to the contrary.

(j) In any county bordering on the State of Alabama, having a population in excess of seventy-five thousand (75,000) according to the 1980 decennial census in which is located an institution of higher learning and a United States military installation and which is traversed by an interstate highway, the salary of the county prosecuting attorney shall not be less than

Twelve Thousand Dollars ($12,000.00) nor more than the amount of the annual salary received by a member of the board of supervisors of that county.

(k) In any county with a land area wherein Mississippi Highways 8 and 9 intersect, the salary of the county prosecuting attorney shall be not less than Eight Thousand Five Hundred Dollars ($8,500.00) per year.

(*l*) In any Class 2 county wherein Mississippi Highways 6 and 3 intersect, the salary of the county prosecuting attorney shall be not less than Twelve Thousand Dollars ($12,000.00) per year nor more than the amount of the annual salary received by a member of the board of supervisors of that county.

(m) In any county wherein Interstate Highway 55 and State Highway 8 intersect, the salary of the county prosecuting attorney shall be not less than Twelve Thousand Dollars ($12,000.00) per year.

(n) In any county wherein U.S. Highway 51 intersects Mississippi Highway 6, and having two (2) judicial districts, the salary of the county prosecuting attorney shall be not less than Three Thousand Six Hundred Dollars ($3,600.00) per year.

(o) In any county bordering on the Alabama state line, having a population of greater than fifteen thousand (15,000) according to the 1970 federal decennial census, wherein U.S. Highway 45 and Mississippi Highway 18 intersect, the salary of the county prosecuting attorney shall be not less than Three Thousand Six Hundred Dollars ($3,600.00) nor greater than that of a member of the board of supervisors of such county. All prior acts, orders and resolutions of the board of supervisors of such county which authorized the payment of the salary in conformity with the provisions of this paragraph, whether or not heretofore specifically authorized by law are hereby ratified, approved and confirmed.

(p) In any county wherein is located a state-supported institution of higher learning and wherein U.S. Highway 82 and Mississippi Highway 389 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of members of the board of supervisors in the county.

(q) In any county having two (2) judicial districts wherein Mississippi Highway 32 intersects U.S. Highway 49E, the salary of the county prosecuting attorney shall be not less than Twelve Thousand Seven Hundred Dollars ($12,700.00).

(r) In any county traversed by the Natchez Trace Parkway wherein U.S. Highway 45 and Mississippi Highway 4 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of justice court judges in the county.

(s) In any county having a population of more than fourteen thousand (14,000) according to the 1970 census and which county is bordered on the north by the State of Tennessee and on the east by the State of Alabama and in which U.S. Highway No. 72 and Highway No. 25 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of justice court judges in the county.

(t)(i) The Board of Supervisors of Madison County, in its discretion, may pay the county prosecuting attorney an annual salary in the amount of Twenty-eight Thousand Dollars ($28,000.00), if the county prosecuting attorney is not employed on a full-time basis.

(ii) From and after October 1, 1993, in addition to the salary provided for in subparagraph (i) of this paragraph, the board of supervisors, in its discretion, may pay the county prosecuting attorney an additional amount not to exceed ten percent (10%) of the maximum allowable salary prescribed herein.

(iii) The Board of Supervisors of Madison County, in its discretion, may employ the elected county prosecuting attorney on a full-time basis during his or her term of office and may pay compensation to the full-time prosecuting attorney in an amount of not more than ninety percent (90%) of the annual compensation and salary of the county court judges of the county as authorized by law, and may provide adequate office space and reasonable office expenses to the county prosecuting attorney. The salary authorized by this subparagraph (iii) for the county prosecuting attorney shall be the sole and complete salary paid by the county for the prosecuting attorney in Madison County, notwithstanding any other provisions of law to the contrary.

(u) In any county having a population in the 1970 census in excess of thirty-five thousand (35,000) and in which U.S. Highways 49W and 82 intersect, and in which is located a state penitentiary, the annual salary of a county prosecuting attorney shall be Thirty Thousand Four Hundred Twenty Dollars ($30,420.00).

(v) In any county wherein Mississippi Highway 50 intersects U.S. Highway 45-Alternate, and having a population greater than twenty thousand (20,000) according to the 1980 federal decennial census, a salary equal to that of a member of the board of supervisors of such county; provided that if such county prosecuting attorney is paid a sum for the purpose of defraying office or secretarial expenses, then the salary prescribed herein shall be reduced by that amount.

(w) In any county in which the 1975 assessed valuation was Forty Million Seven Hundred Thirty-nine Thousand Four Hundred Sixty-six Dollars ($40,739,466.00) and wherein U.S. Highway 45 and Mississippi Highway 8 intersect, the salary of the county prosecuting attorney shall be equal to that of a member of the board of supervisors of such county.

(x) In any county bordering on the Mississippi River having a population greater than fifty thousand (50,000) according to the 1980 federal decennial census and also having a national military park and national cemetery, an annual salary of Twenty-five Thousand Dollars ($25,000.00) or a salary equal to that of a member of the board of supervisors in such county, whichever is greater. In addition, such county prosecuting attorney shall receive the sum of One Thousand Dollars ($1,000.00) per month for the purpose of defraying secretarial expenses.

(y) In any county bordering on the Alabama state line, traversed by the Chickasawhay River, and wherein U.S. Highway 45 and U.S. Highway 84 intersect, a salary that shall be equal to the annual salary of a member of the board of supervisors of such county. All prior acts, orders and resolutions of the board of supervisors of such county which authorize the payment of the salary of the county prosecuting attorney in conformity with the provisions of this section as it existed immediately prior to April 12, 1985, are hereby ratified, approved, confirmed and validated.

(z) In any county having a population greater than sixty-five thousand five hundred eighty (65,580) but less than sixty-five thousand five hundred ninety (65,590) according to the 1990 federal decennial census, wherein U.S. Highway 45 intersects with Mississippi Highway 6, an annual salary equal to Thirty Thousand Dollars ($30,000.00).

(aa) In any county where an institution of higher learning is located and wherein U.S. Highway 82 and U.S. Highway 45 intersect, the salary of the county prosecuting attorney shall be not less than that of a member of the board of supervisors in such county, and the board of supervisors may, in its discretion, pay such county prosecuting attorney a salary in an amount not to exceed the amount of the salary of the District Attorney for the Sixteenth Judicial District of Mississippi.

(bb) In any county having a population greater than six thousand (6,000) according to the federal decennial census and wherein U.S. Highway 61 and Highway 24 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of members of the board of supervisors in the county.

(cc) In any county having a population greater than thirty-one thousand (31,000) according to the 1990 federal decennial census and wherein U.S. Highway 61 and U.S. Highway 49 intersect, a salary of not less than the annual salary of justice court judges in the county.

(dd)(i) The Rankin County prosecuting attorney, if such person is not employed on a full-time basis, shall receive an annual salary of Twenty-nine Thousand Dollars ($29,000.00).

(ii) The Board of Supervisors of Rankin County, in its discretion, may employ the elected county prosecuting attorney and an assistant on a full-time basis during his or her term of office and may pay compensation to such full-time prosecuting attorney in an amount of not more than ninety percent (90%) of the annual compensation and salary of the county court judges of the county as authorized by law, and may provide adequate office space and reasonable office expenses to the county prosecuting attorney and his/her assistant. The Board of Supervisors of Rankin County, in its discretion, may also employ a full-time assistant county prosecuting attorney and may pay such person an annual salary in such amount as determined by the board of supervisors. The salary authorized by this paragraph (dd)(ii) for the elected county prosecuting attorney and an assistant shall be the sole and complete salary paid by the county for the elected prosecuting attorney and assistant in Rankin County, notwithstanding any other provisions of law to the contrary.

(ee) In any county having a population greater than eight thousand (8,000) but less than eight thousand two hundred (8,200) according to the

1990 federal census, and in which U.S. Highway 61 and Mississippi Highway 4 intersect, the board of supervisors may, in its discretion, pay the county prosecuting attorney an amount not to exceed Fourteen Thousand Dollars ($14,000.00), in addition to the maximum allowable salary for that attorney under subsection (1), beginning on April 1, 1997.

(ff) In any county having a population greater than thirty thousand three hundred (30,300) but less than thirty thousand four hundred (30,400) according to the 1990 federal census, and in which U.S. Highway 78 and Mississippi Highway 7 intersect, a salary of not less than the annual salary of a member of the board of supervisors in such county.

(gg) In any county having a population greater than thirteen thousand three hundred (13,300) but less than thirteen thousand four hundred (13,400) according to the 1990 federal census, and in which Mississippi Highway 24 and Mississippi Highway 48 intersect, the board of supervisors may, in its discretion, pay the county prosecuting attorney an additional amount not to exceed ten percent (10%) of the maximum allowable salary for that attorney under subsection (1).

(hh) In any county having a population greater than eight thousand three hundred (8,300) but less than eight thousand four hundred (8,400) according to the 1990 federal census, and in which U.S. Highway 84 and U.S. Highway 98 intersect, the board of supervisors may, in its discretion, pay the county prosecuting attorney an additional amount not to exceed ten percent (10%) of the maximum allowable salary for that attorney under subsection (1).

(ii) In any county having a population of more than thirty thousand four hundred (30,400) and which is traversed in whole or in part by I-59, U.S. Highways 98 and 11 and State Highway 13, the annual salary of the county prosecuting attorney shall be Twenty-five Thousand Dollars ($25,000.00).

(jj) In any county having a population greater than twenty thousand (20,000) according to the 1990 federal census and wherein U.S. Highway 78 and Mississippi Highway 25 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of justice court judges in the county.

(kk) In any county having a population greater than twelve thousand four hundred (12,400) but less than twelve thousand five hundred (12,500) according to the 1990 federal census, and in which U.S. Highway 84 and Mississippi Highway 27 intersect, the board of supervisors may, in its discretion, pay the county prosecuting attorney an additional amount not to exceed ten percent (10%) of the maximum allowable salary for that attorney under subsection (1).

(*ll*) In any county having a population greater than thirty thousand two hundred (30,200) but less than thirty thousand three hundred (30,300) according to the 1990 federal census, and in which U.S. Interstate 55 and Mississippi Highway 84 intersect, the board of supervisors may, in its discretion, pay the county prosecuting attorney an additional amount not to exceed ten percent (10%) of the maximum allowable salary for that attorney under subsection (1).

(mm) In any county on the Mississippi River levee, having a population greater than forty-one thousand eight hundred (41,800) but less than forty-one thousand nine hundred (41,900) according to the 1990 federal census wherein U.S. Highway 61 and Mississippi Highway 8 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of members of the board of supervisors in the county. In addition, the board of supervisors, in its discretion, may pay the county prosecuting attorney the sum of One Thousand Dollars ($1,000.00) per month for the purpose of defraying secretarial expenses.

(nn) In any county having a population greater than twenty-four thousand seven hundred (24,700) and less than twenty-four thousand nine hundred (24,900) according to the 1990 federal census, wherein Mississippi Highways 15 and 16 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of members of the board of supervisors in the county.

(oo) In any county having a population greater than thirty-seven thousand (37,000) but less than thirty-eight thousand (38,000) according to the 1990 federal census, in which is located a state supported institution of higher learning, and in which U.S. Highway 82 and Mississippi Highway 7 intersect, the board of supervisors may, in its discretion, pay the county prosecuting attorney a salary in an amount not to exceed the amount of the salary of the District Attorney for the Fourth Judicial District of Mississippi.

(pp) In any county in which U.S. Highway 78 and Mississippi Highway 15 intersect and which is traversed by the Tallahatchie River, a salary equal to that of members of the board of supervisors of the county, which salary shall be in addition to any sums received for the purpose of defraying office or secretarial expenses and sums received as youth court prosecutor fees.

(qq) In any county bordering on the State of Tennessee and the State of Arkansas, wherein Interstate Highway 55 and Mississippi Highway 302 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of justice court judges in the county.

(rr) In any county that is traversed by the Natchez Trace Parkway and in which Mississippi Highway 35 and Mississippi Highway 12 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary in the amount of the annual salary of justice court judges in the county.

(ss) In any county in which Mississippi Highway 14 and Mississippi Highway 25 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary in the amount of Twenty-two Thousand Dollars ($22,000.00).

(tt) In any county in which Interstate Highway 59 and U.S. Highway 84 intersect, the board of supervisors, in its discretion, may pay the county prosecuting attorney an annual salary equal to the annual salary of members of the board of supervisors in the county.

(uu)(i) In any county bordering on the Mississippi River having a population greater than fifty thousand (50,000) according to the 1980 federal decennial census and also having a national military park and national cemetery, the board of supervisors of the county shall pay an annual salary of Twenty-five Thousand Dollars ($25,000.00) or a salary equal to that of a member of the board of supervisors, whichever is greater, if not employed on a full-time basis. In addition, the county prosecuting attorney shall be paid the sum of One Thousand Dollars ($1,000.00) per month for the purpose of defraying secretarial expenses, if not employed on a full-time basis; or

(ii) The board of supervisors of the county described in subparagraph (i) of this paragraph, in its discretion, may employ the elected county prosecuting attorney on a full-time basis during his or her term of office and may pay compensation to the full-time prosecuting attorney in an amount of not more than ninety percent (90%) of the annual compensation and salary of the County Court Judge of Warren County as authorized by law, and may provide adequate office space and reasonable office expenses to the county prosecuting attorney. The salary authorized herein by this subparagraph (ii) for the county prosecuting attorney shall be the sole and complete salary paid by the county for the prosecuting attorney in Warren County, notwithstanding any other provisions of law to the contrary.

(3) In any case where a salary, expense allowance or other sum is authorized or paid by the board of supervisors pursuant to this section, that salary, expense allowance or other sum shall not be reduced or terminated during the term for which the county attorney was elected.

(4) Notwithstanding any provision of this section to the contrary, no county prosecuting attorney shall receive for his services an annual salary less than the salary paid to a justice court judge in his respective county.

HISTORY:

Codes, Hemingway's 1917, § 699; 1930, § 6502; 1942, § 4164; Laws, 1916, ch. 238; Laws, 1926, ch. 154; Laws, 1928, ch. 203; Laws, 1932, ch. 193; Laws, 1948, ch. 262; Laws, 1956, ch. 190; Laws, 1966, ch. 442, § 1; Laws, 1968, ch. 364, § 1; Laws, 1973, ch. 490, § 1; Laws, 1974, ch. 550, § 1; Laws, 1977, ch. 467; Laws, 1980, ch. 513; Laws, 1981, ch. 490, § 1; Laws, 1985, ch. 506; Laws, 1990, ch. 587, § 1; Laws, 1992, ch. 554, § 1; Laws, 1993, ch. 550, § 5; Laws, 1997, ch. 570, § 3; Laws, 1999, ch. 564, § 1; Laws, 2003, ch. 547, § 1; Laws, 2004, ch. 505, § 13; Laws, 2007, ch. 557, § 4; Laws, 2008, ch. 396, § 1, eff August 11, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subdivision (2)(aa). The word "the" was inserted before "county" so that the phrase "the salary of county prosecuting attorney" will read as "the salary of the county prosecuting attorney." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the text of paragraph (y) of subsection (2) by substituting "prior to April 12, 1985" for "prior to the effective date of Chapter 506, Laws of 1985 [effective April 12, 1985]." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Notes —

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 505, § 13.

On August 11, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 396, § 1.

Cross References —

Additional salary for county prosecuting attorney employed as attorney for board of supervisors, see § 19-23-15.

Additional compensation to county prosecuting attorney for secretarial services, see § 19-23-19.

Classification of counties, see § 25-3-1.

OPINIONS OF THE ATTORNEY GENERAL

County prosecuting attorney may represent county in civil forfeiture proceedings; compensation to be paid to county attorney for such services would have to be included in county attorney's salary. 1993 Miss. Op. Att'y Gen. 533.

The term "total assessed valuation" in §§ 25-3-3 and 25-3-9 includes the assessed valuation of any properties for which a fee in lieu of taxes has been negotiated pursuant to § 27-31-104. 1999 Miss. Op. Att'y Gen. 134.

The salary established for a county attorney by this section comprises the "earned compensation" addressed in § 25-11-103(k). 2003 Miss. Op. Att'y Gen. 24.

Provided it is the duty of the county prosecuting attorney to appear and prosecute the particular case at issue, the $3.00 item of cost may be taxed against a defendant where he enters a plea on a criminal charge and is convicted thereof, on or before the initial hearing/docket call court date, and also where the case is initially docketed for trial and then the defendant later enters a plea of guilty on or before that trial date. 2006 Miss. Op. Att'y Gen. 432.

RESEARCH REFERENCES

CJS.

20 C.J.S., Counties § 179.

§ 25-3-11. Travel and expenses of county attorneys.

In Class 1 counties having two judicial districts and having an area in excess of nine hundred (900) square miles according to the Mississippi Official and Statistical Register issued by the Secretary of State of the State of Mississippi for the year 1952, the board of supervisors is hereby empowered, in its discretion, to provide for and pay the county attorney a sum not to exceed One Hundred Dollars ($100.00) per month as a mileage and automobile expense account, said monies to be paid from the general county fund of such county.

HISTORY:

Codes, 1942, § 4164.5; Laws, 1956, ch. 191.

Cross References —

Uniform system of officers' expense accounts, see § 25-1-81.

Classification of counties, see § 25-3-1.

Provision that officers' salaries shall be full compensation, see § 25-3-37.

RESEARCH REFERENCES

CJS.

20 C.J.S., Counties § 211.

67 C.J.S., Officers §§ 199, 200.

§ 25-3-13. Salaries of supervisors.

(1) The salaries of the members of the boards of supervisors of the various counties are fixed as full compensation for their services.

The annual salary of each member of the board of supervisors shall be based upon the total assessed valuation of his respective county for the preceding taxable year in the following categories and for the following amounts:

(a) For counties having a total assessed valuation of less than Thirty Million Dollars ($30,000,000.00), a salary of Twenty-nine Thousand Dollars ($29,000.00);

(b) For counties having a total assessed valuation of at least Thirty Million Dollars ($30,000,000.00), but less than Fifty Million Dollars ($50,000,000.00), a salary of Thirty-two Thousand Three Hundred Dollars ($32,300.00);

(c) For counties having a total assessed valuation of at least Fifty Million Dollars ($50,000,000.00), but less than Seventy-five Million Dollars ($75,000,000.00), a salary of Thirty-three Thousand Seven Hundred Dollars ($33,700.00);

(d) For counties having a total assessed valuation of at least Seventy-five Million Dollars ($75,000,000.00), but less than One Hundred Twenty-five Million Dollars ($125,000,000.00), a salary of Thirty-four Thousand Seven Hundred Dollars ($34,700.00);

(e) For counties having a total assessed valuation of at least One Hundred Twenty-five Million Dollars ($125,000,000.00), but less than Three Hundred Million Dollars ($300,000,000.00), a salary of Forty Thousand Four Hundred Dollars ($40,400.00);

(f) For counties having a total assessed valuation of at least Three Hundred Million Dollars ($300,000,000.00), but less than One Billion Dollars ($1,000,000,000.00), a salary of Forty-four Thousand Seven Hundred Dollars ($44,700.00);

(g) For counties having a total assessed valuation of One Billion Dollars ($1,000,000,000.00), but less than Two Billion Dollars ($2,000,000,000.00), a salary of Forty-five Thousand Seven Hundred Dollars ($45,700.00);

(h) For counties having a total assessed valuation of Two Billion Dollars ($2,000,000,000.00) or more, a salary of Forty-six Thousand Seven Hundred Dollars ($46,700.00).

(2) The annual salary established for the members of the board of supervisors shall not be reduced as a result of a reduction in total assessed valuation.

(3) The salary of the members of the board of supervisors shall not be increased under this section until the board of supervisors shall have passed a resolution stating the amount of the increase and spread it on its minutes.

HISTORY:

Codes, 1942, §§ 4166-01, 4166-02; Laws, 1970, ch. 318, §§ 1, 2; Laws, 1972, ch. 371, § 1; Laws, 1974, ch. 543, § 1; Laws, 1977, ch. 457; Laws, 1980, ch. 477; Laws, 1985, ch. 402; Laws, 1988 Ex Sess, ch. 31, § 1; Laws, 1993, ch. 550, § 6; Laws, 1997, ch. 570, § 4; Laws, 2004, ch. 505, § 2; Laws, 2006, ch. 435, § 1, eff June 28, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

Laws of 1997, ch. 570, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 570, § 4.

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 505, § 2.

On June 28, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2006 ch. 435, § 1.

Cross References —

Provision that officers' salaries shall be full compensation, see § 25-3-37.

OPINIONS OF THE ATTORNEY GENERAL

If county supervisors are entitled to increase in salary as result of increase in assessed valuation of oil and gas in county which has been reported by tax commission, supervisors may pass a resolution increasing their salaries and may collect amount of increase in salary beginning in January of calendar year following that in which total assessed valuation is determined. 1992 Miss. Op. Att'y Gen. 781.

"Total assessed valuation" refers to total assessed value of county as shown on land rolls, personal property rolls, including assessment of automobiles, and assessed value of all properties in county which are assessed by state tax commission and certified to counties in addition to foregoing; "ad valorem assessment" refers to assessment of property which would be subject to taxation. 1992 Miss. Op. Att'y Gen. 761.

Due to the language in this section which establishes supervisor salaries at "fixed" amounts, the Legislature must clarify the language in the section in order for salaries to be increased in phases over a period of years. 2004 Miss. Op. Att'y Gen. 237.

Once the board of supervisors passes a resolution putting salaries established under Section 25-3-13 into effect, said salaries are thereafter "fixed" pursuant to statute. 2005 Miss. Op. Att'y Gen. 555.

RESEARCH REFERENCES

CJS.

20 C.J.S., Counties § 113.

§ 25-3-15. Additions to assessed valuation for fixing supervisors' salaries in certain counties.

It is hereby further provided that, in any county of the state having producing oil or gas wells, the total valuation of such oil or gas produced, as reported by the State Tax Commission for the last preceding calendar year, may be combined with the total assessed valuation of said county in computing its category for the purpose of fixing the salary of the members of the board of supervisors of said county; provided that in any county wherein twenty-five percent (25%) or more of the real property of the county is owned by an agency of the federal government, and consequently exempt from ad valorem taxes, the salary of the members of the board of supervisors in each such county shall be that established by the next highest rate from that determined by the total assessed value of the property of the county.

HISTORY:

Codes, 1942, § 4166-03; Laws, 1970, ch. 318, § 3; Laws, 1997, ch. 570, § 12, eff October 1, 1997.

Editor's Notes —

Laws of 1997, ch. 570, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 570, § 12.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Provision that officers' salaries shall be full compensation, see § 25-3-37.

RESEARCH REFERENCES

CJS.

20 C.J.S., Counties §§ 8, 113.

§ 25-3-17. Payment of supervisors' salaries.

The salaries provided in Sections 25-3-13 and 25-3-15 shall be payable monthly on the first day of each calendar month during the calendar year following that in which the total assessed valuation is determined; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday. The chancery clerk shall draw his warrant on the general fund of the county, the county road and bridge fund, or any fund of the county available for such purposes.

HISTORY:

Codes, 1942, § 4166-04; Laws, 1970, ch. 318, § 4; Laws, 1997, ch. 572, § 2, eff from and after passage (approved April 23, 1997).

Cross References —

Uniform system of officers' expense accounts, see § 25-1-81.

Provision that officers' salaries shall be full compensation, see § 25-3-37.

RESEARCH REFERENCES

CJS.

20 C.J.S., Counties §§ 113, 176, 180, 181.

§ 25-3-19. Salaries of county auditors.

The chancery clerks, as county auditors, shall receive compensation for their services as such the annual amount of Five Thousand Three Hundred Dollars ($5,300.00), payable in equal monthly installments out of the county treasury; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

HISTORY:

Codes, 1930, § 6505; 1942, § 4167; Laws, 1928, ch. 87; Laws, 1932, ch. 193; Laws, 1938, Ex ch. 25; Laws, 1940, ch. 255; Laws, 1948, ch. 267; Laws, 1950, ch. 258; Laws, 1952, ch. 218; Laws, 1958, ch. 343; Laws, 1966, ch. 300, §§ 1, 2; Laws, 1981, ch. 497, § 2; Laws, 1996, ch. 535, § 1; Laws, 1997, ch. 572, § 3, eff from and after passage (approved April 23, 1997).

Cross References —

Clerk of board of supervisors acting as county auditor, see § 19-17-1.

Fees charged by chancery clerks, see § 25-7-9.

JUDICIAL DECISIONS

1. In general.

County, which was in the fourth class in 1930 and had an assessed valuation of a third class county in 1942, was authorized to allow its auditor a salary of $2,300 for the year 1942 pursuant to this section, providing for change in classification of county for the purpose of determining salaries based upon change in assessed valuation. Barnett v. Woods, 196 Miss. 678, 18 So. 2d 443, 1944 Miss. LEXIS 249 (Miss. 1944).

Assuming that board of supervisors of county which was one of the fourth class in 1930 and had an assessed valuation of a county of the third class in 1942, made unauthorized and excessive allowance as to county auditor's salary for the year 1942 in basing it on classification as a third class county, neither members of the board, nor their bondsmen, could be held personally liable for the reason that the allowance was to an object authorized by law. Barnett v. Woods, 196 Miss. 678, 18 So. 2d 443, 1944 Miss. LEXIS 249 (Miss. 1944).

§ 25-3-21. Allowance for copying assessment rolls.

The board of supervisors may allow to its clerks reasonable compensation, to be paid out of the county treasury, for making copies of assessment rolls required by law, not to exceed One and One-half Cents (1-½¢) for each personal assessment or Three Cents (3¢) for each separate assessment of lands per copy; but the board of supervisors may allow as much as One Hundred Fifty Dollars ($150.00) in any case for copying the personal roll, and each copy thereof shall be considered a roll.

HISTORY:

Codes, 1930, § 6506; 1942, § 4169; Laws, 1924, ch. 206; Laws, 1928, ch. 87; Laws, 1932, ch. 193.

Cross References —

Duties of clerk of board of supervisors as to land assessment and homestead exemption rolls, see § 27-33-35.

Duties of clerk of board of supervisors as to completion and submission of assessment rolls, see § 27-35-123.

RESEARCH REFERENCES

CJS.

67 C.J.S., Officers §§ 381–385.

§ 25-3-23. Deputy chancery clerk in certain counties.

The board of supervisors of any county having two (2) judicial districts and having an assessed valuation of less than Five Million Dollars ($5,000,000.00) for the year 1945, and having a population of less than twenty thousand (20,000) based on the federal census of 1940, may, in their discretion, pay a salary not to exceed Twelve Hundred Dollars ($1200.00) per annum to a regular appointed deputy chancery clerk, who shall reside in and serve in the judicial district of the county other than the judicial district of the county in which the chancery clerk resides, provided the chancery clerk's office in both districts be kept open for official business during the hours required by law.

In counties having two (2) judicial districts, a regular appointed deputy chancery clerk in each judicial district, a total assessed valuation in excess of Fifteen Million Dollars ($15,000,000.00) for the year 1973 and in which Mississippi Highways 8 and 15 intersect, the chancery clerk or deputy clerks designated by him, may be allowed, payable monthly out of the county treasury such sum as the board of supervisors may allow, payable out of the general county fund; provided, the chancery clerk's office in both judicial districts be kept open for official business during the hours required by law. Provided, further, such amounts as may be allowed by the board of supervisors shall be in addition to all other compensation provided by law.

In counties having two (2) judicial districts, a regular appointed deputy chancery court clerk, a total assessed valuation in excess of Ninety Million Dollars ($90,000,000.00), a total population of more than one hundred nineteen thousand (119,000) according to the federal census for the year 1960, and two (2) cities located within such county, each of which had a population of more than thirty thousand (30,000) according to the federal census for the year 1960, the chancery clerk may be allowed, payable monthly out of the county treasury, such sum as the board of supervisors may allow, but not less than Four Hundred Dollars ($400.00) monthly, payable out of the general county fund of such county; and such amounts shall be in addition to all other allowances now provided by law.

In counties having two (2) judicial districts, a regular appointed deputy chancery court clerk, a total population of more than forty-nine thousand (49,000) but less than fifty thousand (50,000) according to the federal census of 1970, the board of supervisors may, in its discretion, pay a salary not to exceed Two Thousand Four Hundred Dollars ($2,400.00) per annum to a regular appointed deputy chancery clerk who shall reside in and serve in the judicial district of the county other than the judicial district of the county in which the chancery clerk resides, provided the chancery clerk's office in both districts be kept open for official business during the hours required by law.

The board of supervisors of any Class 4 county, having two (2) judicial districts, traversed by U.S. Highway 51, wherein Mississippi Highways 7 and 32 intersect, may, in its discretion, pay a salary not to exceed Three Hundred Fifty Dollars ($350.00) monthly to a regular appointed deputy chancery clerk who shall reside and serve in the judicial district of the county other than the judicial district in which the chancery clerk resides, provided the chancery clerk's office in both districts be kept open for official business during the hours required by law.

HISTORY:

Codes, 1942, § 4173-01; Laws, 1946, ch. 286; Laws, 1958, ch. 225; Laws, 1968, ch. 367, § 1; Laws, 1972, ch. 418, § 1; Laws, 1974, ch. 422, eff from and after passage (approved March 25, 1974).

RESEARCH REFERENCES

CJS.
20 C.J.S., Counties §§ 183, 184.

§ 25-3-25. Salaries of sheriffs.

(1) Except as otherwise provided in subsections (2) through (9), the salaries of sheriffs of the various counties are fixed as full compensation for their services.

The annual salary for each sheriff shall be based upon the total population of his county according to the latest federal decennial census in the following categories and for the following amounts; however, no sheriff shall be paid less than the salary authorized under this section to be paid the sheriff based upon the population of the county according to the most recent federal decennial census:

(a) For counties with a total population of more than one hundred thousand (100,000), a salary of Ninety-nine Thousand Dollars ($99,000.00).

(b) For counties with a total population of more than forty-five thousand (45,000) and not more than one hundred thousand (100,000), a salary of Ninety Thousand Dollars ($90,000.00).

(c) For counties with a total population of more than thirty-four thousand (34,000) and not more than forty-five thousand (45,000), a salary of Eighty-five Thousand Dollars ($85,000.00).

(d) For counties with a total population of more than fifteen thousand (15,000) and not more than thirty-four thousand (34,000), a salary of Eighty Thousand Dollars ($80,000.00).

(e) For counties with a total population of not more than fifteen thousand (15,000), a salary of Seventy-five Thousand Dollars ($75,000.00).

(2) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Leflore County, in its discretion, may pay an annual supplement to the sheriff of the county in an amount not to exceed Ten Thousand Dollars ($10,000.00). The Legislature finds and declares that the annual supplement authorized by this subsection is justified in such county for the following reasons:

(a) The Mississippi Department of Corrections operates and maintains a restitution center within the county;

(b) The Mississippi Department of Corrections operates and maintains a community work center within the county;

(c) There is a resident circuit court judge in the county whose office is located at the Leflore County Courthouse;

(d) There is a resident chancery court judge in the county whose office is located at the Leflore County Courthouse;

(e) The Magistrate for the Fourth Circuit Court District is located in the county and maintains his office at the Leflore County Courthouse;

(f) The Region VI Mental Health-Mental Retardation Center, which serves a multicounty area, calls upon the sheriff to provide security for out-of-town mental patients, as well as patients from within the county;

(g) The increased activity of the Child Support Division of the Department of Human Services in enforcing in the courts parental obligations has imposed additional duties on the sheriff; and

(h) The dispatchers of the enhanced E-911 system in place in Leflore County have been placed under the direction and control of the sheriff.

(3) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Rankin County, in its discretion, may pay an annual supplement to the sheriff of the county in an amount not to exceed Ten Thousand Dollars ($10,000.00). The Legislature finds and declares that the annual supplement authorized by this subsection is justified in such county for the following reasons:

(a) The Mississippi Department of Corrections operates and maintains the Central Mississippi Correctional Facility within the county;

(b) The State Hospital is operated and maintained within the county at Whitfield;

(c) Hudspeth Regional Center, a facility maintained for the care and treatment of persons with an intellectual disability, is located within the county;

(d) The Mississippi Law Enforcement Officers Training Academy is operated and maintained within the county;

(e) The State Fire Academy is operated and maintained within the county;

(f) The Pearl River Valley Water Supply District, ordinarily known as the "Reservoir District," is located within the county;

(g) The Jackson International Airport is located within the county;

(h) The patrolling of the state properties located within the county has imposed additional duties on the sheriff; and

(i) The sheriff, in addition to providing security to the nearly one hundred thousand (100,000) residents of the county, has the duty to investigate, solve and assist in the prosecution of any misdemeanor or felony committed upon any state property located in Rankin County.

(4) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Neshoba County shall pay an annual supplement to the sheriff of the county an amount equal to Ten Thousand Dollars ($10,000.00).

(5) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Tunica County, in its discretion, may pay an annual supplement to the sheriff of the county an amount equal to Ten Thousand Dollars ($10,000.00), payable beginning April 1, 1997.

(6) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Hinds County shall pay an annual supplement to the sheriff of the county in an amount equal to Fifteen Thousand Dollars ($15,000.00). The Legislature finds and declares that the annual supplement authorized by this subsection is justified in such county for the following reasons:

(a) Hinds County has the greatest population of any county, two hundred fifty-four thousand four hundred forty-one (254,441) by the 1990 census, being almost one hundred thousand (100,000) more than the next most populous county;

(b) Hinds County is home to the State Capitol and the seat of all state government offices;

(c) Hinds County is the third largest county in geographic area, containing eight hundred seventy-five (875) square miles;

(d) Hinds County is comprised of two (2) judicial districts, each having a courthouse and county office buildings;

(e) There are four (4) resident circuit judges, four (4) resident chancery judges, and three (3) resident county judges in Hinds County, the most of any county, with the sheriff acting as chief executive officer and provider of bailiff services for all;

(f) The main offices for the clerk and most of the judges and magistrates for the United States District Court for the Southern District of Mississippi are located within the county;

(g) The state's only urban university, Jackson State University, is located within the county;

(h) The University of Mississippi Medical Center, combining the medical school, dental school, nursing school and hospital, is located within the county;

(i) Mississippi Veterans Memorial Stadium, the state's largest sports arena, is located within the county;

(j) The Mississippi State Fairgrounds, including the Coliseum and Trade Mart, are located within the county;

(k) Hinds County has the largest criminal population in the state, such that the Hinds County Sheriff's Department operates the largest county jail system in the state, housing almost one thousand (1,000) inmates in three (3) separate detention facilities;

(*l*) The Hinds County Sheriff's Department handles more mental and drug and alcohol commitment cases than any other sheriff's department in the state;

(m) The Mississippi Department of Corrections maintains a restitution center within the county;

(n) The Mississippi Department of Corrections regularly houses as many as one hundred (100) state convicts within the Hinds County jail system; and

(o) The Hinds County Sheriff's Department is regularly asked to provide security services not only at the Fairgrounds and Memorial Stadium, but also for events at the Mississippi Museum of Art and Jackson City Auditorium.

(7) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Wilkinson County, in its discretion, may pay an annual supplement to the sheriff of the county in an amount not to exceed Ten Thousand Dollars ($10,000.00). The Legislature finds and declares that the annual supplement authorized by this subsection is justified in such county because the Mississippi Department of Corrections contracts for the private

incarceration of state inmates at a private correctional facility within the county.

(8) In addition to the salary provided for in subsection (1) of this section, the Board of Supervisors of Marshall County, in its discretion, may pay an annual supplement to the sheriff of the county in an amount not to exceed Ten Thousand Dollars ($10,000.00). The Legislature finds and declares that the annual supplement authorized by this subsection is justified in such county because the Mississippi Department of Corrections contracts for the private incarceration of state inmates at a private correctional facility within the county.

(9) In addition to the salary provided in subsection (1) of this section, the Board of Supervisors of Greene County, in its discretion, may pay an annual supplement to the sheriff of the county in an amount not to exceed Ten Thousand Dollars ($10,000.00). The Legislature finds and declares that the annual supplement authorized by this subsection is justified in such county for the following reasons:

(a) The Mississippi Department of Corrections operates and maintains the South Mississippi Correctional Facility within the county;

(b) In 1996, additional facilities to house another one thousand four hundred sixteen (1,416) male offenders were constructed at the South Mississippi Correctional Facility within the county; and

(c) The patrolling of the state properties located within the county has imposed additional duties on the sheriff justifying additional compensation.

(10) In addition to the salary provided in subsection (1) of this section, the board of supervisors of any county, in its discretion, may pay an annual supplement to the sheriff of the county in an amount not to exceed Ten Thousand Dollars ($10,000.00). The amount of the supplement shall be spread on the minutes of the board. The annual supplement authorized in this subsection shall not be in addition to the annual supplements authorized in subsections (2) through (9).

(11)(a) The salaries provided in this section shall be payable monthly on the first day of each calendar month by chancery clerk's warrant drawn on the general fund of the county; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

(b) At least Ten Dollars ($10.00) from each fee collected and deposited into the county's general fund under the provisions of paragraphs (a), (c) and (g) of subsection (1) of Section 25-7-19 shall be used for the sheriffs' salaries authorized in Section 25-3-25; as such Ten Dollar ($10.00) amount was authorized during the 2007 Regular Session in Chapter 331, Laws of 2007 for the purpose of providing additional monies to the counties for sheriffs' salaries.

(12)(a) All sheriffs, each year, shall attend twenty (20) hours of continuing education courses in law enforcement. Such courses shall be approved by the

Mississippi Board on Law Enforcement Officers Standards and Training. Such education courses may be provided by an accredited law enforcement academy or by the Mississippi Sheriffs' Association.

(b) The Mississippi Board on Law Enforcement Officer Standards and Training shall reimburse each county for the expenses incurred by sheriffs and deputy sheriffs for attendance at any approved training programs as required by this subsection.

HISTORY:

Codes 1942, § 4234.5; Laws, 1968, ch 369, § 4; Laws, 1974, ch. 542, § 1; Laws, 1975, ch. 483; Laws, 1977, ch. 454; Laws, 1980, ch. 529; Laws, 1981, ch. 340, § 1; Laws, 1983, ch. 496; Laws, 1985, ch. 421; Laws, 1988, ch. 498, § 1; Laws, 1992, ch. 478, § 1; Laws, 1993, ch. 431, § 1; Laws, 1997, ch. 570, § 5; Laws, 1998, ch. 459, § 2; Laws, 2004, ch. 505, § 3; Laws, 2010, ch. 476, § 6; Laws, 2014, ch. 323, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (5). The words "the Board of Supervisors of Tunica County may, in their discretion" were changed to "the Board of Supervisors of Tunica County may, in its discretion." The Joint Committee ratified the correction at its April 26, 2001 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference. "Section 25-7-19" was substituted for "this section" in (11)(b). The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes —

On June 12, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1998, ch. 459, § 2.

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2004, ch. 505, § 3.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in the text of this section have been corrected as follows: in (2)(h), "The dispatchers...have been placed..." was substituted for "The dispatchers...has been placed...," and in (6)(*l*), "...drug and alcohol commitment cases..." was substituted for "...drug and alcohol commitments cases..."

OPINIONS OF THE ATTORNEY GENERAL

General salary is full compensation allowable to sheriff; he may not be allowed clothing allowance permitted plainclothes investigators under local and private law. 1992 Miss. Op. Att'y Gen. 825.

Pay raises for county prosecuting attorneys, sheriffs and justice court justices may be made retroactively effective to April 1, 1997, once Laws, 1997, Chapter 570 becomes effectuated under Section 5 of the Voting Rights Act. 1997 Miss. Op. Att'y Gen. 403.

Salaries of sheriffs must be based on official census figures. 2005 Miss. Op. Att'y Gen. 391.

RESEARCH REFERENCES

Am. Jur.

70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 40, 41.

CJS.

80 C.J.S., Sheriffs and Constables §§ 309 et seq.

§ 25-3-27. Salaries of deputy sheriffs in counties having two judicial districts.

The board of supervisors of any county having two judicial districts may, in the discretion of said board, pay a salary of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Two Thousand Five Hundred

Dollars ($2,500.00) to a regularly appointed deputy sheriff, who shall reside in and serve in the judicial district of the county other than the judicial district in which the sheriff of the county resides, provided the sheriff's office in both districts shall be kept open for official business during the hours required by law.

The board of supervisors of any county having two judicial districts with an assessed valuation of less than Four Million Dollars ($4,000,000.00) shall pay a salary of not less than One Thousand Dollars ($1,000.00) nor more than Fifteen Hundred Dollars ($1500.00) per annum to a regularly appointed deputy sheriff, who shall reside in and serve in the judicial district of the county other than the judicial district of the county in which the sheriff resides, provided the sheriff's office in both districts be kept open for official business during the hours required by law.

The board of supervisors of any county having two judicial districts, having a population of less than fifteen thousand (15,000) according to the last federal census, and situated partly inside and partly outside the Yazoo-Mississippi Valley Delta may pay a salary of not less than Two Thousand Four Hundred Dollars ($2,400.00) nor more than Five Thousand Four Hundred Dollars ($5,400.00) per annum to a regularly appointed deputy sheriff, who shall reside in and serve in the judicial district of the county other than the judicial district of the county in which the sheriff resides, provided the sheriff's office in both districts be kept open for official business during the hours required by law.

The board of supervisors of any county having an assessed valuation of not exceeding Six Million Two Hundred Fifty Thousand Dollars ($6,250,000.00) and having situated within its boundaries two federal flood control reservoirs, or parts of said reservoirs, shall pay a salary of Fifteen Hundred Dollars ($1500.00) per annum to a regularly appointed deputy sheriff, who shall reside in and serve in the judicial district of the county other than the judicial district of the county in which the sheriff resides, provided the sheriff's office in both districts be kept open for official business during the hours required by law.

HISTORY:

Codes, 1930, § 6509; 1942, § 4172; Laws, 1928, Ex ch. 82; Laws, 1932, ch. 193; Laws, 1936, ch. 268; Laws, 1938, ch. 308; Laws, 1954, ch. 196; Laws, 1956, ch. 192; Laws, 1962, ch. 387; Laws, 1968, ch. 366, § 1; Laws, 1971, ch. 417, § 1, eff from and after passage (approved March 23, 1971).

Cross References —

Appointment and qualification of deputy sheriffs, see §§ 19-25-19, 19-25-21.

Requirement that sheriff maintain adequate number of deputies, see § 19-25-23.

RESEARCH REFERENCES

Am. Jur.

70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 40, 41.

CJS.

80 C.J.S., Sheriffs and Constables § 502, 505, 509, 510..

§ 25-3-29. Method of paying salaries.

Except as otherwise therein provided, the salaries mentioned in the foregoing sections shall be paid monthly out of the general county fund, and the said salaries and allowances shall be included in the budget of each county; however, the board of supervisors, by resolution duly adopted and entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

HISTORY:

Codes, 1930, § 6510; 1942, § 4174; Laws, 1924, ch. 208; Laws, 1926, ch. 296; Laws, 1997, ch. 572, § 1, eff from and after passage (approved April 23, 1997).

Cross References —

Disposition by board of supervisors of claims against county, see § 19-13-31.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 448 et seq.

CJS.

67 C.J.S., Officers §§ 414–418.

§ 25-3-31. Salaries of elective state and district officers.

The annual salaries of the following elected state and district officers are fixed as follows:

Governor	$122,160.00
Attorney General	108,960.00
Secretary of State	90,000.00
Commissioner of Insurance	90,000.00
State Treasurer	90,000.00
State Auditor of Public Accounts	90,000.00
Commissioner of Agriculture and Commerce	90,000.00
Transportation Commissioners	78,000.00
Public Service Commissioners	78,000.00

If the person serving as Governor on December 31, 2003, is reelected to the Office of Governor for the term beginning in the year 2004, he may choose not to receive the salary increase authorized by this section, but to receive, instead, an annual salary of One Hundred One Thousand Eight Hundred Dollars ($101,800.00) during his new term of office by filing a written request with the Department of Finance and Administration.

HISTORY:

Codes, 1930, § 6511; 1942, § 4175; Laws, 1922, ch. 159; Laws, 1932, ch. 132; Laws, 1938, chs. 152, 153, 154, 156; Laws, 1942, chs. 275, 321; Laws, 1944, chs. 265, 317-319; Laws, 1946, chs. 275, 278, 293, 458; Laws, 1948, chs. 188, 201, 221, 223; Laws, 1950, chs. 199, 343, 443, 466; Laws, 1952, chs. 178, 229, 245, 315, 325, 335; Laws, 1954, chs. 212, 253; Laws, 1954, Ex ch. 16, §§ 1-4; Laws, 1956, ch. 358, § 2; Laws, 1958 chs. 325, 328, 334, 337, 338, 344, 345, 354; Laws, 1960, chs. 324, 332, 333, 334, 335, 336; Laws, 1962, ch. 388, § 2; Laws, 1966, ch. 445, § 1, 1970, ch. 402, § 1; Laws, 1974, ch. 545, § 1; Laws, 1977, ch. 453, § 6; Laws, 1978, ch. 520, § 1; Laws, 1983, ch. 536, § 1; Laws, 1988, ch. 528, § 2; Laws, 1993, ch. 481, § 4; Laws, 1997, ch. 577, § 1; Laws, 2003, ch. 563, § 1; Laws, 2006, ch. 548, § 1; Laws, 2008, ch. 359, § 11, eff from and after July 1, 2008.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2003, ch. 563, §§ 6, 7, provides as follows:

"SECTION 6. The Attorney General of the State of Mississippi shall submit Sections 1 and 2 of this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 7. Sections 1 and 2 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2004, whichever occurs later. Sections 3 through 5 of this act shall take effect and be in force from and after July 1, 2003."

Cross References —

Compensation of assistant secretaries of state, see § 7-3-71.

Authority of Legislature to fix compensation for deputy attorney general, see § 7-5-3.

Authority of Attorney General to fix compensation of assistant attorneys general, see § 7-5-5.

Establishment of General Accounting Office, see § 7-7-3.

Compensation of deputy state treasurer, see § 7-9-5.

Provision that no state officer or employee shall be compensated in excess of the salary fixed for the Governor, see § 25-3-39.

Provision making Governor's salary maximum figure for computation of various retirement benefits, see § 25-11-103.

Provisions of this section not to affect the calculation of average or earned compensation of any member of the public employees' retirement system, see § 25-11-103.

Salary of legal assistant to district attorney, see § 25-31-5.

Term of office and bond of state superintendent of public education, see § 37-3-9.

Appointment and compensation of commissioner of insurance, deputy commissioner, and clerk and stenographer under commissioner, see §§ 83-1-3 et seq.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 429 et seq.

§ 25-3-32. Repealed.

Repealed by Laws, 1997, ch. 577, § 4, eff from and after July 1, 1997. [Laws, 1978, ch. 520, § 2, eff from and after July 1, 1978]

Editor's Notes —

Former section 25-3-32 related to salaries of full-time district attorneys. See now, § 25-3-35.

§ 25-3-33. Repealed.

Repealed by Laws, 2003, ch. 563, § 5, eff from and after July 1, 2003.

[Codes, 1942, § 4175.1; Laws, 1970, ch. 402, § 2; Laws, 1974, ch. 545, § 2; Laws, 1978, ch. 520, § 3; Laws, 1979, ch. 512, § 4; Laws, 1980, ch. 496, § 12, ch. 475, § 4; Laws, 1983, ch. 536, § 2; Laws, 1984, ch. 514; Laws, 1988, ch. 528, § 3; Laws, 1989, 1st Ex Sess, ch. 3, § 8; Laws, 1993, ch. 587, § 3; Laws, 1997, ch. 577, § 2; Laws, 1998, ch. 307, § 1; Laws, 1999, ch. 581, § 1; Laws, 2001, ch. 550, § 1, eff from and after July 1, 2001.]

Editor's Notes —

Former § 25-3-33 provided for the salary of appointed state and district officials.

Laws of 2005, 2nd Ex Sess, ch. 31, § 1, provides as follows:

"SECTION 1. There is hereby created a joint committee to study the reinstatement of the statutory salary cap, also known as the Omnibus Salary Section. The joint committee shall study the effect of the repeal of former Section 25-3-33, Mississippi Code of 1972, upon the increase in salary levels of the affected executive agency directors, deputy directors and the cost of salaries for other related state employees. The joint committee shall be composed of the following members: Chairmen of the Senate and House Appropriations Committees; Chairmen of the Senate and House Fees and Salaries Committees; three (3) members of the Senate appointed by the Lieutenant Governor; and three (3) members of the House appointed by the Speaker of the House of Representatives. The joint committee shall organize for business, select a chairman or co-chairman, and shall develop a report to be made to the 2006 Regular Session of the Legislature. At the conclusion of its work, the joint committee shall be dissolved."

§ 25-3-34. Education benchmarks for appointive state and district officials.

(1) In addition to the salary provided in Section 25-3-33, any appointive state and district official and employee provided therein shall receive the award of an education benchmark as defined in State Personnel Board rules for the possession or attainment of any of the following:

(a) The Certified Public Manager designation;

(b) A job-related Ph.D (Doctor of Philosophy) degree which is not required as a minimum qualification of the position;

(c) A job related certification, licensure, or registration requiring the passage of an examination, which is not required as a minimum qualification of the position.

(2) No such official or employee may receive more than a total of three (3) eligible benchmarks, only one of which may be for a job related certification, licensure or registration.

(3) The State Personnel Board shall promulgate rules and regulations to carry out the provisions of this section.

HISTORY:

Laws, 2000, ch. 478, § 1, eff from and after July 1, 2000.

Editor's Notes —

Section 25-3-33 referred to in (1), was repealed by Laws of 2003, ch. 563, § 5 eff from and after July 1, 2003.

OPINIONS OF THE ATTORNEY GENERAL

The State Personnel Board may not approve an educational benchmark award for a subordinate employee that will result in the employee receiving a total salary in excess of the agency head's salary as set in former Section 25-3-33, but not in excess of the salary paid to the agency head as a result of the additional benchmark award provided in Section 25-3-34. Stringer, Jr., 2001 Miss. Op. Att'y Gen. 552.

The positions listed in repealed Section 25-3-33, for which the salaries are now set by the State Personnel Board, continue to be covered by the regulations and restrictions on educational benchmarks contained in this section. 2003 Miss. Op. Att'y Gen. 293.

§ 25-3-35. Salaries of elected judiciary, district attorneys and legal assistants.

(1) The annual salaries of the following judges are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chief Justice of the Supreme Court	$ 126,292.50
Presiding Justices of the Supreme Court, each	123,600.75
Associate Justices of the Supreme Court, each	122,460.00

From and after January 1, 2014, through December 31, 2014:

Chief Justice of the Supreme Court	$137,195.00
Presiding Justices of the Supreme Court, each	134,011.50
Associate Justices of the Supreme Court, each	132,390.00

From and after January 1, 2015, through December 31, 2015:

Chief Justice of the Supreme Court	$148,097.50
Presiding Justices of the Supreme Court, each	144,422.25
Associate Justices of the Supreme Court, each	142,320.00

From and after January 1, 2016:

Chief Justice of the Supreme Court	$159,000.00
Presiding Justices of the Supreme Court, each	154,833.00
Associate Justices of the Supreme Court, each	152,250.00

There are imposed upon the Supreme Court justices the extra duties of taking all necessary action to promote judicial education in schools, drug courts, electronic filing and case management systems as developed by the Administrative Office of Courts, or such other additional duties as may be assigned by the Chief Justice of the Supreme Court. For such extra services each justice, from and after January 1, 2013, shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (1).

The fixed salaries in this subsection (1) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than: One Hundred Fifteen Thousand Three Hundred Ninety Dollars ($115,390.00) of the Chief Justice's salary in this subsection (1), One Hundred Thirteen Thousand One Hundred Ninety Dollars ($113,190.00) of the salary of a Presiding Justice in this subsection (1), and One Hundred Twelve Thousand Five Hundred Thirty Dollars ($112,530.00) of the salary of an Associate Justice in this subsection (1) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of the Chief Justice, a Presiding Justice and an Associate Justice to the levels set forth in this subsection (1).

The fixed salaries as specified in this subsection (1) shall be the exclusive and total compensation which can be reported to the Public Employees' Retirement System for retirement purposes; however, any judge in office on December 31, 2003, may continue to report his expense allowance as part of his compensation for retirement purposes.

(2) The annual salaries of the judges of the Court of Appeals of Mississippi are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chief Judge of the Court of Appeals	$ 117,992.00
Associate Judges of the Court of Appeals, each	114,994.25

From and after January 1, 2014, through December 31, 2014:

Chief Judge of the Court of Appeals	$127,854.00
Associate Judges of the Court of Appeals, each	124,938.50

From and after January 1, 2015, through December 31, 2015:

Chief Judge of the Court of Appeals	$137,716.00
Associate Judges of the Court of Appeals, each.	134,882.75

From and after January 1, 2016:

Chief Judge of the Court of Appeals	$147,578.00
Associate Judges of the Court of Appeals, each	144,827.00

From and after January 1, 2013, each judge shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (2).

The fixed salaries in this subsection (2) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than One Hundred Eight Thousand One Hundred Thirty Dollars ($108,130.00) of the Chief Judge's salary in this subsection (2) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the Chief Judge's salary to the level set forth in this subsection (2). No less than One Hundred Five Thousand Fifty Dollars ($105,050.00) of the salary of an Associate Judge in this subsection (2) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of an Associate Judge to the level set forth in this subsection (2).

The fixed salaries as specified in this subsection (2) shall be the exclusive and total compensation which can be reported to the Public Employees' Retirement System for retirement purposes; however, any judge in office on December 31, 2003, may continue to report his expense allowance as part of his compensation for retirement purposes.

(3) The annual salaries of the chancery and circuit court judges are fixed as follows:

From and after January 1, 2013, through December 31, 2013:

Chancery Judges, each	$ 112,127.50
Circuit Judges, each	112,127.50

From and after January 1, 2014, through December 31, 2014:

Chancery Judges, each	$120,085.00
Circuit Judges, each	120,085.00

From and after January 1, 2015, through December 31, 2015:

Chancery Judges, each	$128,042.50

Circuit Judges, each	128,042.50
From and after January 1, 2016:	
Chancery Judges, each	$136,000.00
Circuit Judges, each	136,000.00

In addition to their present official duties, the circuit and chancery judges shall take necessary action to promote judicial education in schools, drug courts, electronic filing and case management systems as developed by the Administrative Office of Courts, or such other additional duties as may be assigned by the Chief Justice of the Supreme Court. For such extra services each judge, from and after January 1, 2013, shall receive a sum sufficient to aggregate, per annum, the salaries set forth in this subsection (3).

The fixed salaries in this subsection (3) shall be paid from the State General Fund and from the Judicial System Operation Fund created under Section 9-21-45. No less than One Hundred Four Thousand One Hundred Seventy Dollars ($104,170.00) of the salary of a Chancery or Circuit Judge in this subsection (3) shall be paid from General Fund monies; in addition, the Legislature shall appropriate annually from the Judicial System Operation Fund a sum sufficient to increase the salary of a Chancery or Circuit Judge to the levels set forth in this subsection (3).

(4) From and after January 1, 2019, and every four (4) years thereafter, the annual salaries of the judges in subsections (1), (2) and (3) shall be fixed at the level of compensation recommended by the State Personnel Board according to the board's most recent report on judicial salaries, as required under Section 25-9-115, to the extent that sufficient funds are available. The annual salaries fixed in accordance with this subsection (4) shall not become effective until the commencement of the next immediately succeeding term of office.

(5) The Supreme Court shall prepare a payroll for chancery judges and circuit judges and submit such payroll to the Department of Finance and Administration.

(6) The annual salary of the full-time district attorneys shall be:

From and after January 1, 2013, through December 31, 2013:
One Hundred Three Thousand Three Hundred Twenty-two Dollars ($103,322.00).

From and after January 1, 2014, through December 31, 2014:
One Hundred Ten Thousand Eight Hundred Forty-eight Dollars ($110,848.00).

From and after January 1, 2015, through December 31, 2015:
One Hundred Eighteen Thousand Three Hundred Seventy-four Dollars ($118,374.00).

From and after January 1, 2016:
One Hundred Twenty-five Thousand Nine Hundred Dollars ($125,900.00).

(7) The annual salary of the full-time legal assistants shall be not less than Fifteen Thousand Dollars ($15,000.00) nor more than eighty percent (80%) of the salary of the district attorney for legal assistants who have been licensed to practice law for five (5) years or less; eighty-five percent (85%) of the

salary of the district attorney for legal assistants who have been licensed to practice law for at least five (5) years but less than fifteen (15) years; and ninety percent (90%) of the salary of the district attorney for legal assistants who have been licensed to practice law for at least fifteen (15) years or more.

HISTORY:

Codes, 1942, § 4175.5; Laws, 1966, ch. 445, § 2; Laws, 1970, ch. 402, § 3; Laws, 1974, ch. 351; Laws, 1978, ch. 520, § 4; Laws, 1983, ch. 536, § 3; Laws, 1988, ch. 528, § 4; Laws, 1991, ch. 373, § 3; Laws, 1993, ch. 481, § 5; Laws, 1993, ch. 518, § 32; Laws, 1997, ch. 577, § 3; Laws, 1999, ch. 581, § 3; Laws, 2003, ch. 563, § 2; Laws, 2006, ch. 548, § 2; Laws, 2008, ch. 548, § 1; Laws, 2012, ch. 329, § 1, eff January 1, 2013 (the later of the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section, or January 1, 2013).

Editor's Notes —

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 581, § 3.

Laws of 2003, ch. 563, §§ 6, 7, provides as follows:

"SECTION 6. The Attorney General of the State of Mississippi shall submit Sections 1 and 2 of this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 7. Sections 1 and 2 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2004, whichever occurs later. Sections 3 through 5 of this act shall take effect and be in force from and after July 1, 2003."

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 548, § 1.

By letter dated August 24, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 329, Laws of 2012.

Cross References —

Provision that no state officer or employee shall be compensated in excess of the salary fixed for the governor, see § 25-3-39.

Applicability of compensation and travel expense provisions for circuit court judges to judges of the Mississippi Court of Military Appeals, see § 33-13-417.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 429 et seq.

CJS.

48A C.J.S., Judges §§ 23–33, 189–214.

§ 25-3-36. Compensation of justice court judges; disposition of fees, costs, fines and cash bonds; justice court clerk clearing account.

(1) Until October 1, 2008, every justice court judge shall receive as full compensation for his or her services, and in lieu of any and all other fees, costs or compensation heretofore authorized for such justice court judge, an annual salary based upon the population of his or her county according to the latest federal decennial census; however, no justice court judge shall be paid less than the salary authorized under this section to be paid the justice court judge based upon the population of the county according to the 1980 federal decennial census. The amount of which salary shall be determined as follows:

(a) In counties with a population of more than two hundred thousand

(200,000), a salary of Fifty-five Thousand Five Hundred Fifty-nine Dollars ($55,559.00).

(b) In counties with a population of more than one hundred fifty thousand (150,000) but not more than two hundred thousand (200,000), a salary of Fifty-one Thousand Five Dollars ($51,005.00).

(c) In counties with a population of more than seventy-five thousand (75,000) but not more than one hundred fifty thousand (150,000), a salary of Forty-six Thousand Four Hundred Fifty-one Dollars ($46,451.00).

(d) In counties with a population of more than forty-nine thousand (49,000) but not more than seventy-five thousand (75,000), a salary of Forty Thousand Seventy-five Dollars ($40,075.00).

(e) In counties with a population of more than thirty-four thousand (34,000) but not more than forty-nine thousand (49,000), a salary of Thirty-four Thousand Six Hundred Ten Dollars ($34,610.00).

(f) In counties with a population of more than twenty-four thousand five hundred (24,500) but not more than thirty-four thousand (34,000), a salary of Thirty-two Thousand Seven Hundred Eighty-nine Dollars ($32,789.00).

(g) In counties with a population of more than twenty-one thousand (21,000) but not more than twenty-four thousand five hundred (24,500), a salary of Twenty-nine Thousand One Hundred Forty-six Dollars ($29,146.00).

(h) In counties with a population of more than sixteen thousand five hundred (16,500) but not more than twenty-one thousand (21,000), a salary of Twenty-five Thousand Five Hundred Two Dollars ($25,502.00).

(i) In counties with a population of more than twelve thousand (12,000) but not more than sixteen thousand five hundred (16,500), a salary of Twenty-one Thousand Eight Hundred Fifty-nine Dollars ($21,859.00).

(j) In counties with a population of more than eight thousand (8,000) but not more than twelve thousand (12,000), a salary of Eighteen Thousand Dollars ($18,000.00).

(k) In counties with a population of eight thousand (8,000) or less, a salary of Fourteen Thousand Four Hundred Dollars ($14,400.00).

The board of supervisors of any county having two (2) judicial districts and two (2) justice court judges for the county shall pay each justice court judge an amount equal to that provided in this subsection for judges in the next higher population category per year, if the justice court judge maintains regular office hours and is personally present in the office they maintain for at least thirty (30) hours per week.

In any county having a population greater than eight thousand (8,000) but less than eight thousand five hundred (8,500) according to the 1990 federal decennial census and in which U.S. Highway 61 and Mississippi Highway 4 intersect, the board of supervisors, in its discretion, may pay such justice court judges an additional amount not to exceed the sum of Eleven Thousand Five Hundred Fifty Dollars ($11,550.00) per year, payable beginning April 1, 1997.

In any county having a population greater than ten thousand (10,000) but less than ten thousand five hundred (10,500) according to the 1990 federal decennial census and in which Mississippi Highway 3 and Mississippi Highway 6 intersect, the board of supervisors, in its discretion, may pay such justice court judges an additional amount not to exceed One Thousand Four Hundred Fifty Dollars ($1,450.00) per year, payable beginning April 1, 1997.

In any county having a population greater than twenty-four thousand seven hundred (24,700) and less than twenty-four thousand nine hundred (24,900), according to the 1990 federal census, wherein Mississippi Highways 15 and 16 intersect, the board of supervisors shall pay such justice court judge an additional amount equal to Two Thousand Five Hundred Dollars ($2,500.00) per year.

(2) From and after October 1, 2008, every justice court judge shall receive as full compensation for his or her services, and in lieu of any and all other fees, costs or compensation heretofore authorized for such justice court judge, an annual salary in an amount that is the greater of the following:

(a) The amount paid to a member of the board of supervisors in the same county in which the justice court judge presides; or

(b) One hundred three percent (103%) of the salary authorized under this section as of September 30, 2008, for a justice court judge in that county.

If supervisors of a county receive a salary increase, justice court judges whose salary is determined under this paragraph shall be paid an amount reflecting a commensurate increase.

(3) Notwithstanding the provisions of subsection (1) of this section, in the event that the number of justice court judges authorized pursuant to Section 9-11-2(1) is exceeded pursuant to the provisions of Section 9-11-2(4), the aggregate of the salaries paid to the justice court judges of such a county shall not exceed the amount sufficient to pay the number of justice court judges authorized pursuant to Section 9-11-2(1), and such amount shall be equally divided among those justice court judges continuing to hold office under the provisions of Section 9-11-2(4).

(4) From and after January 1, 1984, all fees, costs, fines and penalties charged and collected in the justice court shall be paid to the clerk of the justice court for deposit, along with monies from cash bonds and other monies which have been forfeited in criminal cases, into the general fund of the county as provided in Section 9-11-19; and the clerk of the board of supervisors shall be authorized and empowered, upon approval by the board of supervisors, to make disbursements and withdrawals from the general fund of the county in order to pay any reasonable and necessary expenses incurred in complying with this section, including payment of the salaries of justice court judges as provided by subsection (1) of this section. The provisions of this subsection shall not, except as to cash bonds and other monies which have been forfeited in criminal cases, apply to monies required to be deposited in the justice court clerk clearing account as provided in Section 9-11-18, Mississippi Code of 1972.

(5) The salaries provided for in this section shall be payable monthly by warrant drawn by the clerk of the board of supervisors on the general fund of the county; however, the board of supervisors, by resolution duly adopted and

entered on its minutes, may provide that such salaries shall be paid semimonthly on the first and fifteenth day of each month. If a pay date falls on a weekend or legal holiday, salary payments shall be made on the workday immediately preceding the weekend or legal holiday.

(6) Provided, that the salary of any justice court judge shall not be reduced during his term of office as a result of a population change following a federal decennial census.

(7) Any justice court judge who is unable to attend and hold court by reason of being under suspension by the Commission on Judicial Performance or the Mississippi Supreme Court shall not receive a salary while under such suspension.

HISTORY:

Laws, 1981, ch. 471, §§ 5, 6; Laws, 1982, ch. 423, § 4; Laws, 1983, 2nd Ex Sess. ch. 7, § 2; Laws, 1984, ch. 502, § 5; Laws, 1985, ch. 365; Laws, 1988, ch. 502, § 1; Laws, 1991, ch. 594, § 2; Laws, 1992, ch. 476, § 1; Laws, 1993, ch. 550, § 7; Laws, 1997, ch. 570, § 6; Laws, 1998, ch. 459, § 1; Laws, 2004, ch. 505, § 4; Laws, 2008, ch. 319, § 7, eff July 24, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On June 12, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1998, ch. 459, § 1.

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 505, § 4.

On July 24, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2007, ch. 319, § 7.

Subsection (4) of Section 9-11-2, referenced in this section, was deleted by § 1 of Chapter 515, Laws of 2014, effective July 1, 2014.

Cross References —

Money paid into the justice court clerk clearing account, see § 9-11-18.

Appointment of justice court clerk, see § 9-11-27.

Authority of Supreme Court to disqualify a judge from serving without loss of salary, see § 9-19-13.

Fee for marriage ceremony performed outside of and away from courtroom, see § 25-7-25.

OPINIONS OF THE ATTORNEY GENERAL

Statutory language is self-executing and therefore, at such time as federal authority officially publishes decennial census, board of supervisors shall authorize clerk to make all necessary salary adjustments, if any, for payment of justice court judges next monthly salary. 1990 Miss. Op. Att'y Gen. 281.

Under statute as amended by House Bill No. 1074, 1993 Miss. Laws, Chapter 550, no justice court judge is to receive less compensation than that received prior to the 1990 census; therefore, even though 1990 population of county dropped below 49,000, justice court judges in that county will continue to receive an annual compensation of $26,400.00 instead of $25,080.00 as provided for by House Bill No. 1074 for counties where population ranges from 34,000 to 49,000. 1993 Miss. Op. Att'y Gen. 417.

Section 25-3-36 sets forth the compensation to be paid to justice court judges. This compensation is based on the population of the county according to the 1990 federal decennial census. There is no provision that gives the Board of Supervisors any authority to increase the salaries of the justice court judges due to an increased caseload. 1996 Miss. Op. Att'y Gen. 457.

Pay raises for county prosecuting attorneys, sheriffs and justice court justices may be made retroactively effective to April 1, 1997, once Laws, 1997, Chapter 570 becomes effectuated under Section 5 of the Voting Rights Act. 1997 Miss. Op. Att'y Gen. 403.

A county which has two justice court clerks and maintains two dockets and two separate buildings for justice court does not have two judicial districts; therefore, the justice court judges in that county are not entitled to the next higher level of payment as set forth in Miss. Code Section 25-3-36. 1997 Miss. Op. Att'y Gen. 479.

In a situation where a decrease in population has led to a reclassification of the county for justice court judge salaries, the justice court judges may be paid the amount that such judges were making prior to the promulgation of the census under the law as it existed at that time, or may be paid the salary designated under the latest version of Section 25-3-36 for the classification they presently fit, whichever is greater. 1997 Miss. Op. Att'y Gen. 707.

A justice court judge is an ex officio notary public, but may not receive additional fees for such services. 1998 Miss. Op. Att'y Gen. 460.

A justice court judge's salary is determined by using the population of the county from either the 1980 or 1990 census, whichever is higher; accordingly, a county board of supervisors was required to increase the salaries of Justice Court Judges effective October 1, 1998. 1998 Miss. Op. Att'y Gen. 740.

There are no provisions for a board of supervisors to increase the salary of a justice court judge due to increased caseload or increased population according to the 2000 federal decennial census. 2002 Miss. Op. Att'y Gen. 331.

RESEARCH REFERENCES

Am. Jur.

15 Am. Jur. Pl & Pr Forms (Rev), Judges, Form 8.1 (complaint to declare justice of peace as holdover magistrate and ordering backpay until successor appointed).

CJS.

51 C.J.S., Justices of the Peace §§ 15-17.

§ 25-3-37. Salaries to be full compensation.

(1) It is expressly provided that the salaries fixed in Sections 25-3-31 through 25-3-35 shall be the full and complete compensation for all public duties rendered by all public officers and public employees designated therein whatever the source of funds, whether appropriated from the State General Fund or allotted from federal funds received by the respective state agencies where such officers and employees are employed. All laws, parts of laws, regulations, or other authority which may have heretofore provided supplemental compensation or expenses of which no itemization therefor was made to the State Auditor of Public Accounts are hereby invalidated and held for naught.

(2) In the event the Commissioner of Public Safety and the highway patrol chief are entitled to longevity pay as provided by law, this section shall not be construed to prohibit the payment thereof.

(3) This section shall not be construed to affect employees of the Mississippi State Penitentiary, the Department of Mental Health and the Governor as pertains to housing, medical care, wholesale food purchases, and other financial benefits or emoluments as pertains to their state employment.

HISTORY:

Codes, 1930, § 6513; 1942, §§ 4175.8, 4176, 4178; Laws, 1932, ch. 333; Laws, 1970, ch. 402, § 5; Laws, 1989, ch. 328, § 1, eff from and after passage (approved March 7, 1989).

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Uniform system of officers' expense accounts, see § 25-1-81.

JUDICIAL DECISIONS

1. In general.

Senate resolution allowing extra compensation to employee of Governor's office violated constitutional inhibition against granting of extra compensation to public officers after services rendered. State of Wimberly v. White, 171 Miss. 663, 157 So. 472, 1934 Miss. LEXIS 239 (Miss. 1934).

OPINIONS OF THE ATTORNEY GENERAL

Although the Commissioner of Public Safety is not entitled to supplemental compensation for any employment duties connected with his position, the duties of Commissioner of Public Safety do not include being a member of the Mississippi Ethics Commission, therefore any per diem the Commissioner would be entitled to as a member of the Ethics Commission can be accepted. 1992 Miss. Op. Att'y Gen. 6.

Limitation provided in section 25-3-37 applies to compensation paid to State Treasurer for performing all public duties and responsibilities relating to office of State Treasurer and limitation was not intended to apply to compensation paid to public officers for performing duties and responsibilities of separate office not enumerated in sections 25-3-31 through 25-3-35, such as trustee of Public Employees' Retirement System. 1994 Miss. Op. Att'y Gen. 749.

While Sections 25-3-37 and 25-3-38 are no longer directly applicable to the state forester, those statutes set forth a sound public policy that must be adhered to, that is that Mississippi public officials whose salaries were previously set by former Section 25-3-33 should not be receiving supplemental compensation from private or federal funds regardless of the manner in which their salaries are set. 2005 Miss. Op. Att'y Gen. 444.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 448 et seq.

CJS.

67 C.J.S., Officers §§ 270 et seq.

§ 25-3-38. Payment of additional funds to appointive officials unlawful; penalty.

The salary for appointive and/or employed officials established herein shall be the total and complete salary, and it shall be unlawful for any additional funds to be paid from any source, including federal or private funds, to supplement salaries to a level in excess of that established herein. If any public officer or employee shall knowingly and wilfully violate the provisions of this section, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than Two Hundred Fifty Dollars ($250.00), and in addition, shall vacate the office or position which he holds.

HISTORY:

Laws, 1978, ch. 520, § 6, eff from and after July 1, 1978.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 448 et seq.

CJS.

67 C.J.S., Officers §§ 270 et seq.

§ 25-3-39. Ceiling established for salaries; sources of funding for salaries; exemptions for Executive Director of Mississippi Development Authority, Governor's Chief of Staff and certain professional public employees.

(1)(a) Except as otherwise provided in this section, no public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, shall be paid a salary or compensation, directly or indirectly, greater than one hundred fifty percent (150%) of the salary fixed in Section 25-3-31 for the Governor, nor shall the salary of any public officer, public employee, administrator, or executive head of any arm or agency of the state, in the executive branch of government, be supplemented with any funds from any source, including federal or private funds. Such salaries shall be completely paid by the state. All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the Mississippi Community College Board, and community and junior colleges, and licensed physicians who are public employees, shall be exempt from this subsection. All professional employees who hold a bachelor's degree or more advanced degree from an accredited four-year college or university or a certificate or license issued by a state licensing board, commission or agency and who are employed by the Department of Mental Health shall be exempt from this subsection if the State Personnel Board approves the exemption. The Commissioner of Child Protection Services is exempt from this subsection. From and after July 1, 2018, the Executive Director of the Public Employees' Retirement System and the Chief Investment Officer of the Public Employees' Retirement System shall be exempt from this subsection.

(b) The Governor shall fix the annual salary of the Executive Director of the Mississippi Development Authority, the annual salary of the Commissioner of Child Protection Services, and the annual salary of the Chief of Staff of the Governor's Office. The salary of the Governor's Chief of Staff shall not be greater than one hundred fifty percent (150%) of the salary of the Governor and shall be completely paid by the state without supplementation from another source. The salary of the Executive Director of the Mississippi Development Authority may be greater than one hundred fifty percent (150%) of the salary of the Governor and may be supplemented with funds from any source, including federal or private funds; however, any state funds used to pay the salary of the Executive Director of the Mississippi Development Authority shall not exceed one hundred fifty percent (150%) of the salary of the Governor. If the executive director's salary is supplemented with private funds, the Mississippi Development Authority shall publish on its website the amount of the supplement and the name of the donor of the private funds.

(2) No public officer, employee or administrator shall be paid a salary or compensation, directly or indirectly, in excess of the salary authorized to be paid the executive head of the state agency or department in which he is

employed. The State Personnel Board, based upon its findings of fact, may exempt physicians and actuaries from this subsection when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market.

(3) The executive head of any state agency or department appointed by the Governor, in such executive head's discretion, may waive all or any portion of the salary or compensation lawfully established for the position.

HISTORY:

Codes, 1942, § 4175.9; Laws, 1932, ch. 333; Laws, 1970, ch. 402, § 5; Laws, 1978, ch. 520, § 17; Laws, 1981, ch. 504, § 15; Laws, 1993, ch. 518, § 33; Laws, 1997, ch. 609, § 2; Laws, 2000, ch. 525, § 1; Laws, 2003, ch. 406, § 2; Laws, 2003, ch. 563, § 3; Laws, 2004, ch. 575, § 1; Laws, 2012, ch. 383, § 1; Laws, 2014, ch. 397, § 3; Laws, 2016, ch. 494, § 3; Laws, 2017, ch. 338, § 8, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Section 2 of ch. 406, Laws of 2003, effective from and after July 1, 2003 (approved March 17, 2003), amended this section. Section 3 of ch. 563, Laws of 2003, effective July 1, 2003 (approved April 24, 2003), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 563, Laws of 2003, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes —

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the first sentence of (1) was corrected by substituting "...one hundred fifty percent (150%) of the salary fixed in..." for "...one hundred fifty percent (150%) the salary fixed in..."

Laws of 2016, ch. 494, § 8 provides:

"SECTION 8. Section 1 of this act [codified as Section 43-26-1] shall take effect and be in force from and after its passage [May 13, 2016], and Sections 2 through 7 of this act [amending Sections 43-15-111, 25-3-39, 25-9-120, 25-9-127, 25-53-1, and 25-53-5, respectively] shall take effect and be in force from and after July 1, 2016."

Amendment Notes —

The 2017 amendment added the last sentence of (1)(a).

Cross References —

State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Provision that salaries shall be full and complete compensation for state officers, see § 25-3-37.

Compensation of Deputy Commissioner of Insurance, see § 25-3-39.1.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-3-39(1) does not apply to county employees. Under its terms, the section applies only to public officers, employees, administrators or executive heads of arms or agencies of the state designated in Sections 25-3-31 through former 25-3-33. 1995 Miss. Op. Att'y Gen. 207.

The State Personnel Board may not approve an educational benchmark award for a subordinate employee that will result in the employee receiving a total salary in excess of the agency head's salary as set in Section 25-3-33[Repealed], but not in excess of the salary paid to the agency head as a result of the additional benchmark award provided in Section 25-3-34. Stringer, Jr., 2001 Miss. Op. Att'y Gen. 552.

The ceiling imposed by § 25-3-39(2) applies to employees' full or "aggregate" compensation. 2002 Miss. Op. Att'y Gen. 372.

For purposes of applying the ceiling imposed by § 25-3-39(2) in the case of agents of the Mississippi Bureau of Narcotics, the executive head of the Bureau of Narcotics is the Director of the Bureau. 2002 Miss. Op. Att'y Gen. 372.

The salary ceiling of § 25-3-39(2) applies to the calculation of retirement benefits. 2002 Miss. Op. Att'y Gen. 372.

A highway patrol officer assigned to duty with the Mississippi Bureau of Narcotics retains his or her status as a highway patrol officer for all purposes; therefore, because the executive head of the agency in which the officer is employed is the Commissioner of Public Safety, the cap imposed by § 25-3-39(2) would, for these officers, apply to the Commissioner's salary. 2002 Miss. Op. Att'y Gen. 372.

Section 25-3-39(1) has never been interpreted to apply to officers, employees or heads of units of local government, and thus does not limit the salary of the executive director of a regional housing authority. 2003 Miss. Op. Att'y Gen. 217.

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 434, 435.

CJS.
67 C.J.S., Officers §§ 270 et seq.

§ 25-3-39.1. Compensation of Deputy Commissioner of Insurance.

The compensation of the Deputy Commissioner of Insurance shall be fixed by the Commissioner of Insurance, subject to approval by the State Personnel Board, and shall be exempt from the provisions of Section 25-3-39.

HISTORY:
Laws, 2009, ch. 448, § 21, eff from and after July 1, 2009.

§ 25-3-40. Annual salary increases; intent to implement minimum wage and maximize salary increases.

On July 1, 1978, and each year thereafter, the Mississippi Compensation Plan shall be amended to provide salary increases in such amounts and percentages as might be recommended by the legislative budget office and as may be authorized by funds appropriated by the Legislature for the purpose of granting incentive salary increases as deemed possible dependent upon the availability of general and special funds.

It is hereby declared to be the intent of the Mississippi Legislature to implement the minimum wage as enacted by statutory law of the United States Congress subject to funds being available for that purpose. It is the intent and purpose of this section to maximize annual salary increases consistent with the availability of funds as might be determined by the Mississippi Legislature at its regular annual session and that all salary increases hereafter be made consistent with the provisions of this section.

HISTORY:
Laws, 1978, ch. 520, § 8; Laws, 1984, ch. 488, § 168, eff from and after July 1, 1984.

Cross References —
Local authorities prohibited from regulating how a private employer pays its employees, see § 17-1-51.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The Board of Nursing sets the salary of its executive director within a salary range established by the State Personnel Board in accordance with the variable compensation plan.

The Board may vote at any time to adjust the salary within the range established and amended by the Personnel Board. The Board does not have to vote to change the salary each time the range changes. 2006 Miss. Op. Att'y Gen. 544.

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 434, 435.

CJS.
67 C.J.S., Officers §§ 396, 397 et seq.

§ 25-3-41. Traveling expenses of state officers and employees; travel services by commercial travel agency.

(1) Subject to the provisions of subsection (10) of this section, when any officer or employee of the State of Mississippi, or any department, agency or institution thereof, after first being duly authorized, is required to travel in the performance of his official duties, the officer or employee shall receive as expenses for each mile actually and necessarily traveled, when the travel is done by a privately owned automobile or other privately owned motor vehicle, the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel.

(2) When any officer or employee of any county or municipality, or of any agency, board or commission thereof, after first being duly authorized, is required to travel in the performance of his official duties, the officer or employee shall receive as expenses Twenty Cents (20¢) for each mile actually and necessarily traveled, when the travel is done by a privately owned motor vehicle; provided, however, that the governing authorities of a county or municipality may, in their discretion, authorize an increase in the mileage reimbursement of officers and employees of the county or municipality, or of any agency, board or commission thereof, in an amount not to exceed the mileage reimbursement rate authorized for officers and employees of the State of Mississippi in subsection (1) of this section.

(3) Where two (2) or more officers or employees travel in one (1) privately owned motor vehicle, only one (1) travel expense allowance at the authorized rate per mile shall be allowed for any one (1) trip. When the travel is done by means of a public carrier or other means not involving a privately owned motor vehicle, then the officer or employee shall receive as travel expense the actual fare or other expenses incurred in such travel.

(4) In addition to the foregoing, a public officer or employee shall be reimbursed for other actual expenses such as meals, lodging and other necessary expenses incurred in the course of the travel, subject to limitations placed on meals for intrastate and interstate official travel by the Department of Finance and Administration, provided, that the Legislative Budget Office shall place any limitations for expenditures made on matters under the jurisdiction of the Legislature. The Department of Finance and Administration shall set a maximum daily expenditure annually for such meals and shall notify officers and employees of changes to these allowances immediately upon approval of the changes. Travel by airline shall be at the tourist rate unless

that space was unavailable. The officer or employee shall certify that tourist accommodations were not available if travel is performed in first class airline accommodations. Itemized expense accounts shall be submitted by those officers or employees in such number as the department, agency or institution may require; but in any case one (1) copy shall be furnished by state departments, agencies or institutions to the Department of Finance and Administration for preaudit or postaudit. The Department of Finance and Administration shall promulgate and adopt reasonable rules and regulations which it deems necessary and requisite to effectuate economies for all expenses authorized and paid pursuant to this section. Requisitions shall be made on the State Fiscal Officer who shall issue his warrant on the State Treasurer. Provided, however, that the provisions of this section shall not include agencies financed entirely by federal funds and audited by federal auditors.

(5) Any officer or employee of a county or municipality, or any department, board or commission thereof, who is required to travel in the performance of his official duties, may receive funds before the travel, in the discretion of the administrative head of the county or municipal department, board or commission involved, for the purpose of paying necessary expenses incurred during the travel. Upon return from the travel, the officer or employee shall provide receipts of transportation, lodging, meals, fees and any other expenses incurred during the travel. Any portion of the funds advanced which is not expended during the travel shall be returned by the officer or employee. The Department of Audit shall adopt rules and regulations regarding advance payment of travel expenses and submission of receipts to ensure proper control and strict accountability for those payments and expenses.

(6) No state or federal funds received from any source by any arm or agency of the state shall be expended in traveling outside of the continental limits of the United States until the governing body or head of the agency makes a finding and determination that the travel would be extremely beneficial to the state agency and obtains a written concurrence thereof from the Governor, or his designee, and the Department of Finance and Administration. However, employees of state institutions of higher learning may expend funds for travel outside of the continental limits of the United States upon a written finding by the president or head of the institution that the travel would be extremely beneficial to the institution.

(7) Where any officer or employee of the State of Mississippi, or any department, agency or institution thereof, or of any county or municipality, or of any agency, board or commission thereof, is authorized to receive travel reimbursement under any other provision of law, the reimbursement may be paid under the provisions of this section or the other section, but not under both.

(8) When the Governor, Lieutenant Governor or Speaker of the House of Representatives appoints a person to a board, commission or other position that requires confirmation by the Senate, the person may receive reimbursement for mileage and other actual expenses incurred in the performance of official duties before the appointment is confirmed by the Senate, as reimbursement for those expenses is authorized under this section.

(9)(a) The Department of Finance and Administration may contract with one or more commercial travel agencies, after receiving competitive bids or proposals therefor, for that travel agency or agencies to provide necessary travel services for state officers and employees. Municipal and county officers and municipal and county employees may also participate in the state travel agency contract and utilize these travel services for official municipal or county travel. However, the administrative head of each state institution of higher learning may, in his discretion, contract with a commercial travel agency to provide necessary travel services for all academic officials and staff of the university in lieu of participation in the state travel agency contract. Any such decision by a university to contract with a separate travel agency shall be approved by the Board of Trustees of State Institutions of Higher Learning and the Executive Director of the Department of Finance and Administration.

(b) Before executing a contract with one or more travel agencies, the Department of Finance and Administration shall advertise for competitive bids or proposals once a week for two (2) consecutive weeks in a regular newspaper having a general circulation throughout the State of Mississippi. If the department determines that it should not contract with any of the bidders initially submitting proposals, the department may reject all those bids, advertise as provided in this paragraph and receive new proposals before executing the contract or contracts. The contract or contracts may be for a period not greater than three (3) years, with an option for the travel agency or agencies to renew the contract or contracts on a one-year basis on the same terms as the original contract or contracts, for a maximum of two (2) renewals. After the travel agency or agencies have renewed the contract twice or have declined to renew the contract for the maximum number of times, the Department of Finance and Administration shall advertise for bids in the manner required by this paragraph and execute a new contract or contracts.

(c) Whenever any state officer or employee travels in the performance of his official duties by airline or other public carrier, he may have his travel arrangements handled by that travel agency or agencies. The amount paid for airline transportation for any state officer or employee, whether the travel was arranged by that travel agency or agencies or was arranged otherwise, shall not exceed the amount specified in the state contract established by the Department of Finance and Administration, Office of Purchasing and Travel, unless prior approval is obtained from the office.

(10)(a) For purposes of this subsection, the term "state agency" means any agency that is subject to oversight by the Bureau of Fleet Management of the Department of Finance and Administration under Section 25-1-77.

(b) Each state agency shall use a trip optimizer type system developed and administered by the Department of Finance and Administration in computing the optimum method and cost for travel by state officers and employees using a motor vehicle where the travel will exceed one hundred (100) miles per day and the officer or employee is not driving a state-owned or state-leased vehicle that has been dedicated or assigned to the officer or employee.

(c) The provisions of this subsection shall be used to determine the most cost-effective method of travel by motor vehicles, whether those vehicles are owned by the state agency, leased by the state agency, or owned by the officer or employee, and shall be applicable for purposes of determining the maximum authorized amount of any travel reimbursement for officers and employees of those agencies related to vehicle usage.

(d) The maximum authorized amount of travel reimbursement related to motor vehicle usage shall be the lowest cost option as determined by the trip optimizer type system. All travel claims submitted for reimbursement shall include the results of the trip optimizer type system indicating the lowest cost option for travel by the state officer or employee.

(e) In providing a calculation of rates, the trip optimizer type system shall account for the distance that an officer or employee must travel to pick up a rental or state fleet vehicle, and shall account for the long-term rate discounts offered through the state purchasing contract for vehicle rentals.

(f) This subsection shall not apply to travel by state officials in motor vehicles driven by the official or in vehicles used for the transport of the official. The exemption in this paragraph (f) applies only to the state official and not to the staff or other employees of the state official. As used in this paragraph (f), "state official" means statewide elected officials and the elected members of the Public Service Commission.

HISTORY:

Codes, 1942, § 4061-01; Laws, 1950, ch. 448, § 1; Laws, 1958, ch. 335; Laws, 1962, ch. 491; Laws, 1970, ch. 400,§ 1; Laws, 1974, ch. 303; Laws, 1978, ch. 487, § 1(1); Laws, 1980, ch. 502; Laws, 1984, ch. 488, § 169; Laws, 1985, ch. 455, § 5; Laws, 1986, ch. 500, § 2; Laws, 1990, ch. 320, § 1; Laws, 1994, ch. 612, § 1; Laws, 1998, ch. 571, § 1; Laws, 2000, ch. 581, § 1; Laws, 2001, ch. 440, § 1; Laws, 2002, ch. 630, § 1; Laws, 2005, ch. 310, § 1; Laws, 2006, ch. 425, § 1; Laws, 2006, ch. 537, § 4; Laws, 2017, ch. 409, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Section 1 of ch. 425, Laws of 2006, effective from and after passage (approved March 15, 2006) amended this section. Section 4 of ch. 537, Laws of 2006, effective from and after July 1, 2005 (approved April 17, 2006) also amended this section. As set out above, this section reflects the language of Section 4 of ch. 537, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Notes —

Section 11 of Chapter 448, Laws of 1950 (see now § 25-1-93), declares that no section, portion or part of said chapter shall in any way be construed to apply to the Governor or the Governor's office of the State of Mississippi. Since this code section is derived from said Chapter 448, it is probably inapplicable to the Governor or to the Governor's office.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Amendment Notes —

The 2017 amendment added "Subject to the provisions of subsection (10) of this section" at the beginning of (1); and added (10).

Cross References —

Remuneration of legislators for the mileage allowance provided by this section, see § 5-1-41.

Additional mileage and expense allowances of lieutenant governor, senators, and representatives, for attendance at sessions of legislature, see § 5-1-47.

Travelling expenses of state legislators, see § 5-1-47.

Mileage allowance for members of the joint legislative committee on performance evaluation and expenditure review, see § 5-3-67.

Mileage and reimbursement of expenses for members of the standing joint legislative committee on reapportionment, see § 5-3-95.

Mileage and reimbursement of expenses for members of the standing joint congressional redistricting committee, see § 5-3-125.

Applicability of this provision to members of the commission on interstate cooperation, see § 5-5-9.

Reimbursement of person appointed as special judge or senior judge, see §§ 9-1-105 and 9-1-107.

Reimbursement of travel expenses for special judges, see § 9-1-105.

Reimbursement for travel expenses incurred by judges of Court of Appeals, see § 9-4-13.

Compensation of court reporters for circuit and chancery courts, and amount contributed by counties toward salary, see § 9-13-19.

Reimbursement of mileage expenses of circuit or chancery court reporters, see § 9-13-19.

Reimbursement for traveling and subsistence expenses for members of the Judicial Advisory Study Commission, see § 9-21-39.

Appointed member of Tort Claims Board entitled to per diem and travel reimbursement, see § 11-46-18.

State grand jurors entitled to reimbursement for travel and mileage as provided in this section, see § 13-7-15.

Reimbursement of expenses of commissioners of regional solid waste management authorities, see § 17-17-313.

Payment of travel expenses to hazardous waste facility siting authority, see § 17-18-7.

Reimbursement for expenses of members of Hazardous Waste Technical Siting Committee, see § 17-18-11.

Travel expenses of members of county boards of supervisors, see § 19-3-67.

Reimbursement of expenses of county employees or officials traveling to attend professional education programs, see § 19-3-77.

Reimbursement of expenses incurred by boards of commissioners of county cooperative service districts, see § 19-3-105.

Payment of mileage expense for transporting persons to St. Jude Hospital in Memphis, Tennessee, see § 19-5-93.

Expenses and mileage, as provided for herein, payable to members of Board of Emergency Telecommunications Standards and Training, see § 19-5-351.

Provision requiring state boards and agencies to keep duplicate receipt books recording transfers of funds, see § 25-1-75.

Uniform system of officers' expense accounts, see § 25-1-81.

Penalty for claim, receipt, approval, or allowance of travel expenses in excess of authorized amount, see § 25-3-45.

Fees for grand jurors and petit jurors, see § 25-7-61.

Compensation of jurors making inquisitions of idiocy, lunacy or of unsound mind and jurors on coroner's inquest, see § 25-7-61.

Compensation and expenses of members of state personnel board, see § 25-9-113.

Reimbursement of members of Mississippi Personnel Advisory Council, see § 25-9-117.

Compensation and travel expenses for board of trustees of public employees' retirement system, see § 25-11-15.

Compensation for members of investment advisory board, see § 25-11-15.

Expenses of tax assessors and collectors attending annual or regional conferences, see § 27-3-59.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Mileage allowance for members of the Joint Legislative Budget Committee, see § 27-103-101.

Reimbursement of expense of members of the Board of the Mississippi Development Bank, see § 31-25-11.

Expenses and mileage of members of Mississippi Telecommunications Conference and Training Center Commission, see § 31-31-5.

Compensation for inspections and other duties, see § 33-7-23.

Reimbursement of expenses of Veterans' Home Purchase Board members, see § 35-7-7.

Applicability of this provision to members of the state board of education, see § 37-1-1.

Applicability of this provision to members of the advisory board of the school executive management institute, see § 37-3-4.

Reimbursement of the expenses of members of the State Board for Community and Junior Colleges, see § 37-4-3.

Applicability of this section to per diem and mileage expenses of members of a school board, see § 37-6-13.

Reimbursement for expenses and mileage of members of the Commission on School Accreditation, see § 37-17-3.

Applicability of this section to compensation for mileage for junior college trustees, see § 37-29-65.

Expenses of members of State Board of Rehabilitation Services, see § 37-33-155.

Compensation and travel expenses of executive director, employees and members of educational television authority, see §§ 37-63-5, 37-63-7.

Travel and lodging expenses of board of directors of Prepaid Affordable College Tuition Program Trust Fund, see § 37-155-7.

Reimbursement for state licensed teacher moves under critical shortage of teachers act, see § 37-159-5.

Reimbursement for licensed teacher employment interviews under critical shortage of teachers act, see § 37-159-7.

Authorization for library trustees to be reimbursed for traveling expenses and mileage as provided in this section, see § 39-3-15.

Travel expenses of hospital trustees in attending continuing education courses, see § 41-7-140.

Applicability of this section to compensation and per diem allowances for members of the board of trustees of county hospitals or other health facilities, see § 41-13-29.

Reimbursement of expenses of emergency medical advisory council, see § 41-59-7.

Reimbursement of members of the Mississippi Hospital Equipment and Facilities Authority for actual and necessary expenses, see § 41-73-11.

Children's Health Insurance Program Commission, per diem and expense reimbursement, see § 41-86-9.

Compensation of members of State Department of Human Services, see § 43-1-2.

Mileage and other expenses for members of TANF Implementation Council, see § 43-1-30.

Reimbursement of mileage and expenses of members of child care facilities advisory board, see § 43-20-7.

Payment of mileage and other expenses for members of Mississippi Home Corporation, see § 43-33-715.

Applicability of this section to reimbursement of expenses of members of the board on law enforcement officer standards and training and of advisors to the board, see § 45-6-5.

Right of members of the state fire academy advisory board who are not state employees to receive travel expenses as provided in this section, see § 45-11-8.

Reimbursement of expenses of members of radiation advisory council, see § 45-14-9.

Expenses of members of the prison industries advisory council, see § 47-5-329.

Reimbursement for mileage and expenses under this section for directors of nonprofit corporation formed to manage prison industries, see § 47-5-541.

Expenses of members of state parole board, see § 47-7-5.

Traveling expenses of departmental employees, see § 49-2-19.

Travel and hotel expenses for Advisory Council created to conduct study as to costs and development of Title V, Clean Air Act, program, see § 49-17-16.

Per diem compensation for members of Environmental Permit Board, see § 49-17-28.

Reimbursement for mileage for members of the state forestry commission, see § 49-19-1.

Applicability of this section to mileage and expenses of the directors of the Pearl River Valley Water Supply District, see § 51-9-107.

Reimbursement for mileage and expenses of directors of Tombigbee River Valley Water Management District as provided in this section, see § 51-13-105.

Applicability of mileage reimbursement provided by this section to local commissioners of drainage districts, see § 51-29-17.

Travel expenses of Mississippi Veterans Monument Commission, see § 55-15-53.

Reimbursement of expenses of members of small business consortium board, see § 57-10-159.

Reimbursement of expenses of members of Mississippi Business Finance Corporation, see § 57-10-167.

Applicability of expense reimbursement provisions to representatives of Mississippi on the Southern States Energy Board, see § 57-25-7.

Expenses of appointed members of the Mississippi-Louisiana Rapid Rail Transit Commission, see § 57-45-1.

Reimbursement of expenses of members of nuclear waste policy advisory council, see § 57-49-7.

Reimbursement of expenses of members of nuclear waste technical review committee, see § 57-49-11.

Payment of travel expenses for members of state port authority, see § 59-5-21.

Applicability of this section to reimbursement of expenses of enforcement officers appointed by the boat and water safety commission, see § 59-21-123.

Reimbursement of expenses of members of the motor vehicle commission, see § 63-17-65.

Members of Appeals Board of State Transportation Commission to receive reimbursement for mileage and actual expenses, in accordance with this section, see § 65-1-46.

Application of this section to reimbursement for travel expenses of members of the Department of Agriculture and Commerce Arbitration Council, see § 69-3-19.

Reimbursement for expenses of members of Mississippi Egg Marketing Board, see § 69-7-255.

Applicability of this section to travel expenses incurred in the examination of egg dealers and handlers by the egg marketing board, see § 69-7-263.

Applicability of this section to mileage and expenses of members of the board of animal health, see § 69-15-5.

Per diem allowance for members of State Soil and Water Conservation Commission, see § 69-27-9.

Applicability of this section to per diem, mileage and other expenses incurred by members of Workers' Compensation Advisory Council, see § 71-3-119.

Reimbursement of expenses for members of the advisory committee to the Mississippi State Board of Architecture, see § 73-2-13.

Reimbursement of expenses of members of Mississippi Auctioneers Commission, see § 73-4-7.

Applicability of this section to mileage and expenses of members of the board of barber examiners, see § 73-5-3.

Expense reimbursement for members of state board of chiropractic examiners, see § 73-6-9.

Applicability of this section to reimbursement of expenses of members of the state board of cosmetology, see § 73-7-1.

Compensation and travel expenses for members and employees of state board of cosmetology, see § 73-7-3.

Reimbursement of expenses of members of the Mississippi Council of Advisors in Dietetics in accordance with this section, see § 73-10-21.

Reimbursement of expenses for members of state board of funeral service, see § 73-11-49.

Reimbursement of travel expenses for members of state board of licensure for professional engineers and land surveyors, see § 73-13-9.

Expense reimbursement for members of state board of nursing home administrators, see § 73-17-7.

Applicability of this section to reimbursement of expenses of members of the Mississippi Physical Therapy Advisory Council, see § 73-23-41.

Application of this section to the compensation received by the members of the Advisory Council in Occupational Therapy, see § 73-24-15.

Members of Real Estate Appraiser Licensing and Certification Board entitled to mileage and expenses authorized by this section, see § 73-34-7.

Reimbursement of expenses of members of Real Estate Commission, see § 73-35-5.

Reimbursement of expenses for members of board of registration for foresters, see § 73-36-17.

Reimbursement of expenses of members of council of advisors in speech-pathology and audiology, see § 73-38-15.

Provision as to payment of travel expenses of members of the state board of medical licensure, see § 73-43-7.

Reimbursement of travel expenses for members of Registered Professional Geologists Board, see § 73-63-11.

Professional Art Therapists Advisory Council reimbursement for travel expenses, see § 73-65-3.

Expenses and mileage for members of Mississippi Commission on Proprietary School and College Registration, see § 75-60-4.

Reimbursement of traveling expenses for members of state athletic commission, see § 75-75-107.

Reimbursement of expenses of personnel of public utilities staff, see § 77-3-8.

Reimbursement for mileage and travel expenses for banking examiners and commissioner of banking and consumer finance, see § 81-1-71.

Payment of mileage to members of state board of banking review, see § 81-3-12.

Reimbursement of expenses of members of board of directors of Comprehensive Health Insurance Risk Pool Association, see § 83-9-211.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Expenses not reimbursed.

1. Constitutionality.

Duties and responsibilities, including allowing authority for Educational Television to contract (§ 37-63-11), giving concurrence for the use of funds to travel outside the continental United States (§ 25-3-41), advertising for and accepting bids on equipment for the State Crime Laboratory (§ 63-11-47), granting authority for the purchase of motor vehicles by state departments, institutions, or agencies (§ 25-1-77), and approving dispersement of funds by the Mississippi Air and Water Pollution Commission (§ 49-17-13), are administrative functions within the prerogative of the executive department, and statutes vesting those powers and functions in members of the legislature violate Miss. Const. Art. 1, § 2 and are unconstitutional. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

2. Expenses not reimbursed.

Mayor was not entitled to mileage reimbursement because he failed to comply with this statute, which required preauthorization for mileage reimbursement, and that authorization had to be made on a case-by-case basis. Davis v. State ex rel. Hood, 198 So. 3d 367, 2015 Miss. App. LEXIS 657 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 596, 2016 Miss. LEXIS 379 (Miss. 2016).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority empowering regional library system to reimburse professional job applicants for travel expenses incurred in connection with interviewing for job vacancies within system. 1990 Miss. Op. Att'y Gen. 36.

Expenses incurred by council members (1) attending luncheons, dinners or banquets, or (2) traveling to and from council meetings, cannot legally be interpreted as incurred "in performance of official duties." 1990 Miss. Op. Att'y Gen. 488.

Sheriff could authorize out of county travel for deputy out of sheriff's travel budget for necessary travel made in county patrol car without necessity of seeking additional approval of board of supervisors; if officer travels in his personal vehicle, sheriff could authorize officer to expend public funds on his meal, lodging, and other necessary expenses, except mileage as this expense would have to be approved by board of supervisors. 1990 Miss. Op. Att'y Gen. 614.

Travel within city by council members, either to or from council meetings, is not reimbursable under statute. 1990 Miss. Op. Att'y Gen. 102.

Since Miss. Code Section 25-3-41 allows travel expenses to be reimbursed only "when any officer or employee of the state or county" is required to travel in scope of employment, if person in question is official county engineer, receiving salary under Miss. Code Section 65-17-205, then county may pay reasonable expenses for engineer to attend various professional meetings which board determines and approves in advance as being necessary and related to engineer's county responsibilities; however, if engineer in question is independent contractor, who is being paid by county on contract basis, then such engineer may not receive any expenses unless provided for by contract. 1993 Miss. Op. Att'y Gen. 102.

Department of Finance and Administration, without further legislative redress, lacks authority to categorically deny reimbursement of all taxable meals. 1993 Miss. Op. Att'y Gen. 570.

Payment of cost of luncheon or dinner for city officers or employees in connection with seminar held by city for city officers and employees would constitute violation of law 1993 Miss. Op. Att'y Gen. 628.

When travel by public carrier is to location where private or state owned vehicle is not available, and transportation by motor vehicle is necessary such that rental vehicle is required, and such having previously been authorized, Section 25-3-41 authorizes such officer or employee to be reimbursed actual, reasonable and necessary expense incurred for such rental vehicle. 1993 Miss. Op. Att'y Gen. 819.

Under Section 25-3-41(2), travel must be duly authorized by the county board of supervisors before reimbursement can be received. 1995 Miss. Op. Att'y Gen. 201.

A court reporter may not claim and be paid mileage expenses under Section 25-3-41 for travel from the court reporter's home to his primary place of employment or "main office." 1995 Miss. Op. Att'y Gen. 179.

Under Section 25-3-41(4), a municipal governing authorities may in their discretion reimburse employees and officers for meals when the meal expenses are incurred in the course of travel which is not overnight and which is required in the performance of official duties. The governing authorities may define "travel" and specify which meal expenses will be reimbursed when officers and employees must travel beyond the geographic locations where they routinely work. 1995 Miss. Op. Att'y Gen. 260.

Section 25-3-41 does not allow local governing authorities to pass broadly worded reimbursement "authorizations" and that such a practice would negate the need for a case-by-case determination as to whether the reimbursement is proper. 1995 Miss. Op. Att'y Gen. 346.

Whether a travel expense is incurred "in the performance of his official duties" is a factual determination to be made by the City Council on a case-by-case basis prior to the expense being authorized and incurred. Section 25-3-41 does not permit a blanket authorization. 1995 Miss. Op. Att'y Gen. 346.

If a constable were given a lawful order by the court to transport a prisoner from the jail to the court, he may be entitled to mileage reimbursement as set forth in Section 25-3-41. 1996 Miss. Op. Att'y Gen. 369.

That travel expenses that are anticipated by the sheriff of a county and are specifically included in the annual budget which is approved by the board of supervisors are duly authorized as required by Section 25-3-41. 1996 Miss. Op. Att'y Gen. 562.

An officer or employee of a municipality may be paid in advance for authorized travel expenses, but travel to and from council meetings, and expenses incurred attending luncheons, dinners or banquets are not legally reimbursable. 1997 Miss. Op. Att'y Gen. 357.

A non-profit Mississippi corporation organized and existing for the purpose of providing public ambulance service is not subject to the provisions of the statute. 1998 Miss. Op. Att'y Gen. 183.

If a supervisor does not have a county vehicle available for use when travel is necessary, he may draw mileage pursuant to the statute, and there is no requirement that all county supervisors turn in their county owned vehicles in order for one supervisor to draw mileage. 1998 Miss. Op. Att'y Gen. 332.

The county board of supervisors is the proper fact finder in determining whether a proposed travel expense will be incurred in the performance of official duties; thus, if the board determines, in advance and on a case by case basis, that travel is necessary for the proper conduct of county business and should be reimbursed, then such a finding can be made and reimbursement had although, generally speaking, traveling to and from boards of supervisors' meetings cannot be legally interpreted as incurred in the performance of official duties. 1998 Miss. Op. Att'y Gen. 332.

There is no authority for a municipality to reimburse aldermen for expenses for travel or dues for professional associations when these expenses and dues were not authorized prior to travel. 1998 Miss. Op. Att'y Gen. 425.

The governing authorities could pay the travel expenses of officers who attended the convention where (1) the board, by a majority vote, approved travel to the convention by officers on the minutes on April 7, 1998, and (2) the board voted again on May 12, 1998 on an order to authorize travel expenses for officers who desired to attend the Convention and that order did not pass; payment was still permitted since the latter vote did not rescind or cancel the earlier vote. 1998 Miss. Op. Att'y Gen. 454.

If an inmate sues the county board of supervisors and the sheriff and the trial occurs two years later out of county where overnight stay becomes a necessity, the county may reimburse the sheriff and supervisors for out of pocket expenses for the hotel, meals, and mileage, even if some of these elected officials are no longer holding public office at the time of the trial. 1998 Miss. Op. Att'y Gen. 679.

Where the governing authorities paid an alderman who owned a car for mileage expenses for travel to conference in advance of the travel, they did not have authority to also pay a second alderman who rode in the same car for mileage. 1999 Miss. Op. Att'y Gen. 81.

This section does not apply to public transportation of Medicaid recipients who participate in the Division of Medicaid's Non-Emergency Transportation program. 1999 Miss. Op. Att'y Gen. 106.

A county does not have authority to obtain credit cards for use by the board of supervisors and board attorney for use associated with county business. 1999 Miss. Op. Att'y Gen. 182.

Members of the Mississippi State Board of Medical Licensure may receive travel expenses, meals, lodging, and other necessary expenses when they, after first being duly authorized, are required to travel in the performance of their official duties, and such official duties may include attending ad hoc committee meetings at times other than regular board meetings. 1999 Miss. Op. Att'y Gen. 646.

The Department of Marine Resources may arrange lodging on a week-to-week basis for the duration of a legislative session in order to carry out the official duties of the department, as long as state regulations are followed in the exercise of this power. 2000 Miss. Op. Att'y Gen. 716.

There is no authority for governing boards of public universities, community colleges, and school districts to obtain credit cards to be issued in the names of the respective institutions to officers or employees for use in the course and scope of employment. 2000 Miss. Op. Att'y Gen. 654.

A mayor does not have the authority to receive expenses for travel without prior board approval either specifically in the minutes or by official board policy adopted in the minutes. 2002 Miss. Op. Att'y Gen. 55.

A mayor and the aldermen may receive travel advances upon prior approval in the minutes by the board of aldermen in accordance with the guidelines adopted by the Department of Audit; however, there is no authority for advance payment of per diem. 2002 Miss. Op. Att'y Gen. 55.

An officer or employee of the state must obtain prior authorization for travel in order to be reimbursed for expenses incurred in travel. 2002 Miss. Op. Att'y Gen. 523.

Governing authorities of a municipality may, in their discretion, adopt a policy regarding reimbursement for meal expenses incident to travel which would establish a maximum daily allowance for those meals, and would not require the submission of receipts. 2003 Miss. Op. Att'y Gen. 106.

Sections 19-4-1 and 19-4-7 permit the board of supervisors to delegate to the county administrator their duty to approve travel by county employees under Section 25-3-41; however, giving advance approval to certain classes of employees, rather than individual employees, to attend unspecified training classes during a particular month or similar time period, does not satisfy the requirements of Section 25-3-41. 2005 Miss. Op. Att'y Gen. 625.

A county board of supervisors may, by appropriate action, increase the mileage rate for its officers and employees, and employees, or for any agency, board or commission of the county, not to exceed that allowed for state officers and employees, without increasing the mileage rate for jurors. 2006 Miss. Op. Att'y Gen. 642.

Even if travel is for official purposes, unless approved prior to the trip, a municipality is not authorized to pay for or reimburse an officer or employee for expenses related to that travel, and the approval of a claim for official travel which was not previously authorized either specifically in the minutes or by official policy of the municipality would be unlawful. 2006 Miss. Op. Att'y Gen. 73.

A governing authority may define which expenses are reimbursable travel expenses, consistent with the rules and regulations of the Department of Finance and Administration. Reimbursement of travel expenses may only be made for travel authorized by a governing authority in minutes or by resolution or ordnance, and must be included in the annual budget. A governing authority can authorize a department head to approve travel it has budgeted. Only the administrative head of a municipal department may authorize travel advances. 2007 Miss. Op. Att'y Gen. 135, 2007 Miss. AG LEXIS 120.

RESEARCH REFERENCES

ALR.

Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements. 5 A.L.R.2d 1182.

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 458, 460–464 et seq.

65 Am. Jur. 2d, Public Works and Contracts §§ 8-81.

CJS.

67 C.J.S., Officers §§ 381–385, 394, 434–436.

73A C.J.S., Public Contracts §§ 1-24, 41.

§ 25-3-43. Travel expenses of judiciary.

(1) When any chancery judge, county judge or circuit judge shall be required to travel in the performance of his official duties, such judge shall receive as expenses of such travel the mileage allowance and a reimbursement for other actual and necessary expenses incurred in such travel as provided for public officers and employees in Section 25-3-41, Mississippi Code of 1972. This shall be the entire travel allowances or travel expenses received by such judges.

(2) Chancery judges and circuit judges shall direct requests for reimbursement for the travel expenses authorized pursuant to this section to the Supreme Court and the Supreme Court shall submit such requests to the Department of Finance and Administration.

(3) The Supreme Court shall have the power to adopt rules and regulations regarding the administration of travel expenses authorized pursuant to this section.

(4) In any county in which is located a State Penitentiary, the board of supervisors, in order to compensate the justice court judges who are required to travel to the State Penitentiary, is authorized to reimburse justice court judges' mileage in the amount authorized by Section 25-3-41, but not to exceed One Hundred Dollars ($100.00) per month, such monies to be paid from the general county fund of such county.

(5) In addition to the regular salary provided by Section 25-3-35 and the mileage reimbursement provided by Section 25-3-41, each Supreme Court Justice and each judge of the Court of Appeals shall receive an expense allowance as specified in this subsection. The expense allowance shall be equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Missis-

sippi, as may be established by federal regulations, per day, for each day while actually attending to judicial duties in Jackson, Mississippi, not to exceed twenty (20) days per month.

HISTORY:

Codes, 1942, §§ 1653.9, 4175.5; Laws, 1966, ch. 445, § 2; Laws, 1970, ch. 334, § 1; Laws, 1970, ch. 402, § 3; Laws, 1991, ch. 373, § 4; Laws, 1992, ch. 360, § 1; Laws, 1999, ch. 532, § 1, eff from and after July 6, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Cross References —

Reimbursement of travel expenses for special judges, see § 9-1-105.

Salaries for justices of Supreme Court, see § 25-3-35.

Applicability of compensation and travel expense provisions for circuit court judges to judges of the Mississippi Court of Military Appeals, see § 33-13-417.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 458, 460–464 et seq.

CJS.

48A C.J.S., Judges §§ 189-214, 343–348.

67 C.J.S., Officers §§ 275-281, 287.

§ 25-3-45. Penalty for excessive travel expenses.

It shall be unlawful for any person to claim, receive, approve, or allow any item of expense for official travel in excess of that authorized by Section 25-3-41.

If any person shall knowingly and wilfully violate any of the provisions of said section, such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Two Hundred Fifty Dollars ($250.00) and, in addition, shall be removed from the office or position which he holds. Such person shall also be civilly liable for the full amount of the expense account illegally received, allowed, or approved by him, and the person receiving same shall be so liable whether the violation be wilful or not.

HISTORY:

Codes, 1942, §§ 4061-05, 4061-10; Laws, 1950, ch. 448, §§ 5, 10.

Editor's Notes —

Section 11 of Chapter 448, Laws of 1950 (see now § 25-1-93), declares that no section, portion or part of said chapter shall in any way be construed to apply to the Governor or the Governor's office of the State of Mississippi. Since this code section is derived from said Chapter 448, it is probably inapplicable to the Governor or to the Governor's office.

Cross References —

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-3-47. Department subordinates.

Unless otherwise expressly fixed or provided by law, the heads of the departments hereinabove enumerated shall each select and appoint his or their respective subordinates, and may at any time remove a subordinate and appoint his successor; and the subordinate shall perform such duties as shall be prescribed by the said head or heads of his department. Unless as to a particular subordinate, some other form of oath is prescribed by law, every subordinate shall take and subscribe an oath well and faithfully to perform all the duties incumbent upon him, which oath shall be filed in the office of the secretary of state.

HISTORY:

Codes, 1930, § 6514; 1942, § 4179.

Cross References —

Persons before whom oath of office may be taken, see § 25-1-9.

Filing oath of office of state officers, see § 25-1-11.

Authority of deputy to perform duties of deceased officer, see § 25-1-39.

JUDICIAL DECISIONS

1. In general.

An engineer employed by the Mississippi State Oil and Gas Board was liable to discharge at the pleasure of the supervisor of the Board under § 25-3-47; since § 53-1-9 modifies § 25-3-47 only in relation to the hiring of employees of the Oil and Gas Board, the engineer could be terminated at any time and did not have a property interest in his employment. White v. Mississippi State Oil & Gas Bd., 650 F.2d 540, 1981 U.S. App. LEXIS 12776 (5th Cir. Miss. 1981).

RESEARCH REFERENCES

CJS.

67 C.J.S., Officers §§ 178-183.

§ 25-3-49. Salaries in special appointments.

In case of the death, resignation, or removal from office of any of the officers mentioned in Section 25-3-47, the person elected or appointed, temporarily or permanently, to fill such vacancy shall, from the time he shall enter upon the discharge of his official duties, receive the compensation authorized by this chapter, and at the same rate for any period of time less than one (1) year, and for so long as the person shall serve as such officer.

HISTORY:

Codes, 1892, § 3953; 1906, § 4477; Hemingway's 1917, § 7270; 1930, § 6515; 1942, § 4180.

Cross References —

Authority of deputy to perform duties of deceased officer, see § 25-1-39.

RESEARCH REFERENCES

CJS.

67 C.J.S., Officers §§ 100-109, 119, 122-126, 130.

§ 25-3-51. Deduction for absence from the state.

Any officer of this state who receives a salary may, when the duties of his office will best permit, be absent from the state not more than one (1) month in any one (1) year without any deduction from his salary; but the state treasurer, the secretary of state, and auditor of public accounts shall, while absent, leave their offices so attended as to produce no injury to persons having business in said offices. If any officer who receives a salary shall be absent from the state without the consent of the governor for a longer time than one (1) month in any one (1) year, he shall be subject to a pro rata deduction from his salary for the length of time he shall be absent more than one (1) month; and, on his return, before he shall be entitled to any warrant on the treasury for his salary or any part thereof thereafter accruing, he shall make oath to the number of days he shall have been absent beyond one month and file the same in the office of the auditor of public accounts; and it shall be the duty of the auditor to deduct twice the number of days so sworn to from the time for which the salary of such officer may be estimated.

HISTORY:

Codes, 1892, § 3956; 1906, § 4480; Hemingway's 1917, § 7273; 1930, § 6518; 1942, § 4183.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Authority of legislature to regulate deductions from salaries of public officers for neglect of duty, see Miss. Const. Art. 4, § 78.

Devolution of powers and duties of office of governor, upon absence or disability, see Miss. Const. Art. 5, § 131.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 475 et seq.

CJS.

67 C.J.S., Officers § 289-293.

§ 25-3-53. Compensation of special judges of circuit, county, or chancery courts.

When a special commission shall issue for the holding of a term of any circuit, county or chancery court by a special judge, or for the trial or hearing by such officer of any case in any such court because of the disqualification or disability of the judge or chancellor thereof (or where, because of the disqualification of the judge or chancellor, the attorneys involved have agreed upon a member of the bar to preside as special judge), the special judge shall receive compensation as provided in Section 9-1-105, for the time he shall serve as such, and the Fiscal Management Board shall issue its warrant therefor on the certificate of the clerk of the court in which the services were rendered for the time served.

HISTORY:

Codes, 1892, § 3954; 1906, § 4478; Hemingway's 1917, § 7271; 1930, § 6516; 1942, § 4181; Laws, 1948, ch. 222; Laws, 1952, ch. 236; Laws, 1971, ch. 348, § 1; Laws, 1989, ch. 587, § 5, eff from and after April 25, 1989 (became law without the Governor's signature).

Editor's Notes —

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

RESEARCH REFERENCES

Am. Jur.

46 Am. Jur. 2d, Judges §§ 237-251.

CJS.

48 C.J.S., Judges §§ 181-206, 327-330.

§ 25-3-55. Compensation of special judge of Supreme Court.

When a special judge or special judges shall be commissioned to preside in any cause in the Supreme Court, or during any term thereof or during the disability or disqualification of any of the judges of said court, such special judge or judges shall each be entitled to the compensation provided for in Section 9-1-105. Each judge so serving shall make out an itemized account of the number of days he in good faith served, and make affidavit to same and file it with the Clerk of the Supreme Court. The said clerk shall issue a certificate showing the length of time such special judge or judges served, and the Fiscal Management Board shall issue its warrant therefor.

HISTORY:

Codes, 1892, § 3955; 1906, § 4479; Hemingway's 1917, § 7272; 1930, § 6517; 1942, § 4182; Laws, 1964, ch. 424; Laws, 1989, ch. 587, § 6, eff from and after April 25, 1989 (became law without the Governor's signature).

Editor's Notes —

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the Department of Finance and Administration.

RESEARCH REFERENCES

Am. Jur.

46 Am. Jur. 2d, Judges §§ 237-251.

CJS.

48 C.J.S., Judges §§ 236–271.

§ 25-3-57. Deduction for absence from court.

In case any judge of the Supreme Court or the Court of Appeals or of a circuit court or chancery court shall fail to attend at any term of court which either of them is required by law to hold, or in case the Attorney General or any district attorney shall fail to attend at any court which he is required to attend officially, it shall be the duty of the clerk of such court to certify the number of days such judge, chancellor, Attorney General, or district attorney was absent at each term of the court to the Auditor of Public Accounts, who shall deduct twice the number of days so certified from the time for which the salary of such officer may be estimated, unless such officer shall make oath, and file the same in the Auditor's office, that his absence was occasioned by sickness of himself or his family, or that his attendance was prevented by high water, the prevalence of an epidemic or contagious disease, or by accident not within his control.

HISTORY:

Codes, 1892, § 3957; 1906, § 4481; Hemingway's 1917, § 7274; 1930, § 6519; 1942, § 4184; Laws, 1993, ch. 518, § 34, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References —

Duty of Legislature to regulate deductions from salaries of public officers for neglect of duty, see Miss. Const. Art. 4, § 78.

Appointment of attorney to act for state during absence of Attorney General, see § 7-5-31.

Terms of Supreme Court, see § 9-3-3.

Adjournment of Supreme Court for absence of judge, see § 9-3-5.

Appointment pro tempore of attorney to act for state during absence or inability of district attorney, see § 25-31-21.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 475 et seq.

CJS.

48A C.J.S., Judges §§ 190, 191 and 212–214.

67 C.J.S., Officers §§ 398–403.

§ 25-3-59. Deduction for absence from meeting of public service commission.

In case a public service commissioner shall fail to attend at any meeting or session of the public service commission appointed for the transaction of business, he shall be subject to a pro rata deduction from his salary; and the executive secretary of said commission or, in his absence, the commissioner or commissioners present shall certify to the auditor of public accounts the number of days such commissioner was absent at each meeting or session. The auditor shall deduct twice the number of days so certified from the time for which the salary of such commissioner may be estimated, unless such commissioner shall make and file an affidavit in the auditor's office that his absence was occasioned by sickness of himself or a member of his family, or by the prevalence of an epidemic or a contagious disease, or by means not within his control.

HISTORY:

Codes, 1892, § 3959; 1906, § 4483; Hemingway's 1917, § 7276; 1930, § 6521; 1942, § 4186.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Duty of Legislature to regulate deductions from salaries of public officers for neglect of duty, see Miss. Const. Art. 4, § 78.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 472 et seq.

CJS.

67 C.J.S., Officers §§ 398–403.

§ 25-3-61. Governor may grant leave of absence.

The Governor may grant leave of absence for a time not to exceed three (3) months in the year to any officer at a time when the duties of his office will admit of the absence without injury to the public service; but a judge, district attorney, and the attorney general shall not have a leave of absence which will interfere with his presence at any term of court at which he should be present. Nor shall a public service commissioner have a leave of absence which will interfere with his presence at any session or meeting of the public service commission.

HISTORY:

Codes, 1892, § 3960; 1906, § 4484; Hemingway's 1917, § 7277; 1930, § 6522; 1942, § 4187.

Cross References —

Duty of Legislature to regulate deductions from salaries of public officers for neglect of duty, see Miss. Const. Art. 4, § 78.

Power of Governor to supervise official conduct of state officers, see § 7-1-5.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 475 et seq.

§§ 25-3-63 and 25-3-65. Repealed.

Repealed by Laws, 1976, ch. 490. § 6, eff from and after July 1, 1976.

§ 25-3-63. [Codes, 1982, § 3958; 1906, § 4482; Hemingway's 1917, § 7275; 1930 § 6520; 1942, § 4185; 1968, ch. 435, § 1; 1970, ch. 403, § 1]

§ 25-3-65. [Codes, 1942, § 4187-01; Laws, 1946, ch. 223; 1975, ch. 486, § 1]

Editor's Notes —

Former § 25-3-63 pertained to sick leave for salaried state employees. See §§ 25-3-91 et seq. for comparable provisions.

Former § 25-3-65 pertained to vacation for salaried state employees. For comparable provisions, see §§ 25-3-91 et seq.

§ 25-3-67. Deductions from municipal employees' salaries for contributions for United Way, insurance, and United States Savings Bonds.

The governing authorities of any municipality may, within their discretion, deduct from the salary of any individual municipal employee an amount to be deposited with the municipal credit union, contributions for the United Way, life, health-and-accident insurance and United States Savings Bonds, if a request for such deductions is made in writing by the employee.

HISTORY:

Laws, 1976, ch. 480, eff from and after passage (approved May 25, 1976).

OPINIONS OF THE ATTORNEY GENERAL

Municipalities have the local discretion to recoup the additional costs which are reasonably associated with providing a payroll deduction service for its employees pursuant to 25-3-67. 1995 Miss. Op. Att'y Gen. 240.

The statute does not limit the payroll deductions for insurance purposes only to those policies procured for the employee by the employer under the authority of Section 25-15-101. 2001 Miss. Op. Att'y Gen. 204.

Municipal governing authorities do not have discretion to allow any payroll deductions beyond those listed in Section 25-3-67, which does not include wage assignments. 2002 Miss. Op. Att'y Gen. 649.

Payroll deductions for Sam's Club memberships for municipal employees are not authorized. 2005 Miss. Op. Att'y Gen. 648.

§ 25-3-69. Uniform per diem compensation for officers and employees of state boards, commissions and agencies.

Unless otherwise provided by law, all officers and employees of state agencies, boards, commissions, departments and institutions authorized by law to receive per diem compensation for each day or fraction thereof occupied with the discharge of official duties shall be entitled to Forty Dollars ($40.00) per diem compensation. When the Governor, Lieutenant Governor or Speaker of the House of Representatives appoints a person to a board, commission or other position that requires confirmation by the Senate, the person may receive per diem compensation for the performance of official duties before such appointment is confirmed by the Senate, as such per diem compensation is authorized under this section.

HISTORY:

Laws, 1980, ch. 560, § 1; Laws, 2001, ch. 440, § 2; Laws, 2005, ch. 310, § 2, eff from and after July 1, 2005.

Cross References —

Lieutenant Governor, senators and representatives, see § 5-1-47.

Joint legislative committee on performance evaluation and expenditure review, see § 5-3-67.

Standing joint congressional redistricting committee, see § 5-3-125.

Interstate cooperation, commission, see § 5-5-9.

Per diem compensation for members of the Judicial Advisory Study Commission, see § 9-21-39.

Appointed member of Tort Claims Board entitled to per diem and travel reimbursement, see § 11-46-18.

Jury commissioner, see § 13-5-6.

State grand jurors entitled to per diem compensation as provided in this section, see § 13-7-15.

Hazardous waste facility siting authority, see § 17-18-7.

County cooperative service districts, boards of commissioners, see § 19-3-105.

Bailiffs, see § 19-25-31.

Election commissioners, see §§ 23-15-153, 23-15-211, and 23-15-227.

Ethics Commission, see § 25-4-13.

State personnel board, see § 25-9-113.

Data Processing Authority, see § 25-53-9.

Bureau of Capitol Facilities, see § 29-5-6.

Development Bank Board, see § 31-25-11.

Expenses and mileage of members of Mississippi Telecommunications Conference and Training Center Commission, see § 31-31-5.

State Veterans' Affairs Board, see § 35-1-5.

Veteran's Home Purchase Board, see § 35-7-7.

State Board of Education, see § 37-1-1.

Teacher and administrator education, certification and development, commission, see § 37-3-2.

School executive management institute, advisory board see § 37-3-4.

Community and Junior Colleges, state board, see §§ 37-4-3, 37-4-4.

Per diem and mileage expenses for members of school boards, see § 37-6-13.

School Accreditation Commission, see § 37-17-3.

Junior college trustees, see § 37-29-65.

State Board of Rehabilitation Services, see § 37-33-155.

Educational television authority, see § 37-63-5.

Board of Trustees of State Institutions of Higher Learning, persons attending meetings, see § 37-101-3.

State Institutions of Higher Learning, board of trustees, see § 37-101-9.

Board of directors of Prepaid Affordable College Tuition Program Trust Fund, see § 37-155-7.

Health, state board, see § 41-3-4.

Mental health, state board, see § 41-4-3.

Hospital trustees for continuing education programs, see § 41-7-140.

County hospitals or other health facilities, board of trustees, see § 41-13-29.

County mosquito control commission, see § 41-27-1.

Emergency medical advisory council, see § 41-59-7.

Hospital Equipment and Facilities Authority, see § 41-73-11.

Children's Health Insurance Program Commission, per diem and expense reimbursement, see § 41-86-9.

Human Services, state board, see § 43-1-2.

Per diem allowable to members of TANF Implementation Council, see § 43-1-30.

Child care facilities advisory board, see § 43-20-7.

Family child care homes, advisory council, see § 43-20-55.

Home Corporation, see § 43-33-715.

State fire academy advisory board members who are not state employees, see § 45-11-8.

Radiation advisory council, see § 45-14-9.

Prison industries advisory council, see § 47-5-329.

Nonprofit corporation formed to manage prison industries, directors, see § 47-5-541.

State Parole Board, see § 47-7-5.

Environmental Quality Commission, see § 49-2-5.

Environmental Permit Board, see § 49-17-28.

State Forestry Commission, see § 49-19-1.

Pearl River Valley Water Supply District, directors, see § 51-9-107.

Compensation of directors of Tombigbee River Valley Water Management District at the per diem rate specified in this section, see § 51-13-105.

Drainage districts, local commissioners, see § 51-29-17.

Drainage districts, county commissioners, see § 51-31-13.

Urban flood and drainage control districts, directors, see § 51-35-317.

Veterans Monument Commission, see § 55-15-53.

Business Finance Corporation of Mississippi, Inc., see § 57-10-167.

Southern States Energy Board, representatives, see § 57-25-7.

Nuclear waste policy advisory council, see § 57-49-7.

Nuclear waste technical review committee, see § 57-49-11.

Port Authority, state, see § 59-5-21.

County port authority or county development commission, see § 59-9-13.

Motor vehicle commission, see § 63-17-65.

Members of Appeals Board of State Transportation Commission to receive per diem in amount authorized by this section, see § 65-1-46.

Central Market Board, see § 69-7-105.

Egg Marketing Board, see § 69-7-255.

Animal Health Board, see § 69-15-5.

Medical Advisory Board of the Workers' Compensation Commission, see 71-3-115.

Workers' Compensation Advisory Council, see § 71-3-119.

Employment Security Commission, advisory council, see § 71-5-123.

Architecture board, see § 73-1-11.

Landscape architecture advisory committee to the Mississippi State Board of Architecture, see § 73-2-13.

Mississippi Auctioneer Commission, see § 73-4-7.

Barber examiners board, see § 73-5-3.

Chiropractic examiners board, see § 73-6-9.

Cosmetology board, see § 73-7-1.

Dental examiners board, see § 73-9-43.

Funeral service board, see § 73-11-49.

Engineers and land surveyors, state board of licensure, see § 73-13-9.

Nursing board, see § 73-15-11.

Nursing home administrators board, see § 73-17-7.

Optometry board, see § 73-19-13.

Public accountancy board, see § 73-33-7.

Real Estate Appraiser Licensing and Certification Board, see § 73-34-7.

Real Estate Commission, see § 73-35-5.

Foresters, board of registration, see § 73-36-17.

Speech pathology and audiology, council of advisors, see § 73-38-11 et seq.

Registered Professional Geologists Board, see § 73-63-11.

Athletic Commission, see § 75-75-107.

Mississippi Gaming Commission, see § 75-76-9.

Municipal Gas Authority of Mississippi, commissioners, see § 77-6-11.

Local natural gas districts' board of directors, see § 77-15-1.

Banking Review Board, see § 81-3-12.

Rural Risk Insurance Association, board of directors, see § 83-38-9.

State executioner, see § 99-19-53.

OPINIONS OF THE ATTORNEY GENERAL

A judge should order, pursuant to Section 25-3-69, each county to pay the bailiff's wages for the day or days that he serves in that county. 1995 Miss. Op. Att'y Gen. 54.

Hospital trustees are entitled to receive a per diem of forty dollars authorized by Section 25-3-69 for no more than thirty-six meetings for any one calendar year. 1995 Miss. Op. Att'y Gen. 469.

Based on Sections 25-7-27(e) and 19-19-7, a constable has a duty to attend both the criminal and civil cases in justice court in his district. However, a constable may be compensated with a per diem as provided under Section 25-3-69 when such constable serves as a bailiff in civil cases only. No similar provision exists that would provide compensation to the constable for serving as bailiff in a criminal case. 1996 Miss. Op. Att'y Gen. 606.

A county board of supervisors may choose to compensate its census committee pursuant to the standard per diem rate authorized by the statute, but as there may be some overlap between the duties and responsibilities of the census committee and that of the election commission, careful records must be maintained by the two committees to avoid duplicative payments. 1998 Miss. Op. Att'y Gen. 473.

A commissioner who is entitled to receive per diem compensation under this section and who arrives at an airport authority commission meeting after the commissioners transact the business on the agenda but before they vote to adjourn the meeting is technically entitled to receive per diem compensation for that day. 1999 Miss. Op. Att'y Gen. 374.

The statute permits the payment of per diem compensation to members of the Mississippi State Board of Medical Licensure for attending ad hoc committee meetings that are held at a time other than regular board meetings when such attendance is for the discharge of official duties of such members. 1999 Miss. Op. Att'y Gen. 646.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. 2007 Miss. Op. Att'y Gen. 130, 2007 Miss. AG LEXIS 103.

§ 25-3-71. Annual report of recommendations of salary increases and amounts.

The State Personnel Board shall prepare a written legislative report to be submitted to the members of the Mississippi Legislature on December 1, 1988, and on December 1 of every year thereafter, making recommendations on any salary increases and the amounts deemed necessary for all state and county elected officials and state appointed officials whose salaries are established by statute.

HISTORY:

Laws, 1988, ch. 528, § 5, eff from and after July 1, 1988.

§ 25-3-73. Repealed.

Repealed by Laws, 2000, ch. 581, § 1, eff from and after passage May 20, 2000.

[Laws, 1997, ch. 572, § 4; Laws, 1998, ch. 591, § 1, eff from and after passage (approved April 17, 1998).]

Editor's Notes —

Former § 25-3-73 required all state and nonstate service employees to be paid on a delayed basis, twice per month, beginning on January 1, 2001.

VACATION TIME AND SICK LEAVE

Sec.	
25-3-91.	Definitions.
25-3-92.	Compensatory leave; administrative leave.
25-3-93.	Personal leave.
25-3-95.	Major medical leave.
25-3-97.	Records; final payments upon leaving state employment; affidavits as to absences; transfer of accrued leave; employee's death.

Sec.	
25-3-99.	Prior payment of leave earned unaffected.
25-3-101.	Promulgation of rules.
25-3-103.	Mississippi Organ Donor Leave Law; legislative intent; definitions; paid leave; number of days of leave allowed; approval required; adoption of rules governing organ donation leave.

§ 25-3-91. Definitions.

For purposes of Sections 25-3-91 through 25-3-99, the following words and terms shall have the meaning described herein, unless the context requires otherwise:

(a) "Appointing authority" shall mean such person, agency or authority authorized by law to employ individuals in state government, but shall not include the Board of Directors of the Mississippi Industries for the Blind.

(b) "Catastrophic injury or illness" means a life-threatening injury or illness of an employee or a member of an employee's immediate family which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation from the state for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries, are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, which result in intermittent absences from work and which are long-term in nature and require long recuperation periods may be considered catastrophic.

(c) "Employee" means a person appointed to a position in the state service or nonstate service as defined in Section 25-9-107, for which he is compensated on a full-time permanent or provisional basis, a temporary basis, or a part-time basis. However, in order for an employee to be eligible to receive donated leave, the employee must meet the requirements provided in Section 25-3-95(8).

(d) "Workday" shall mean a day as defined in Section 25-1-98.

(e) "Temporary employment" means the employment of a person in a temporary or time-limited position not to exceed twelve (12) months.

(f) "Part-time employment" means the employment of a person in a part-time position.

HISTORY:

Laws, 1976, ch. 490, § 1; Laws, 1977, ch. 473, § 1; Laws, 1981, ch. 504, § 2; Laws, 1997, ch. 519, § 1; Laws, 1998, ch. 574, § 4; Laws, 2003, ch. 472, § 3, eff from and after passage (approved Mar. 25, 2003).

Editor's Notes —

Laws of 1998, ch. 574, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

Cross References —

Application of definition of employee in computing credit for vacation pay, see § 25-3-93.

Donating earned personal leave to another employee, see § 25-3-95.

Creditable service, defined, see § 25-11-103.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority for a school district to pay for employee benefits accruing to an individual as a result of previous employment with another school district. 1995 Miss. Op. Att'y Gen. 319.

For purposes of determining creditable service and calculating average compensation for retirement benefits, leave accrued at rates in excess of that provided in Section 25-3-91 et seq. and the lump sum payment of personal leave in excess of thirty days would not be included. 1996 Miss. Op. Att'y Gen. 797.

Although Miss. Code Sections 25-3-91 and 25-3-95, which permit state employees to donate a certain portion of their earned personal leave or major medical leave to another employee under some circumstances, do not apply to municipal employees, municipalities may adopt ordinances or resolutions providing for a similar program in a municipality in the absence of a state statute governing a similar municipal employee leave program. 1997 Miss. Op. Att'y Gen. 361.

Even when a state agency has a policy of granting administrative leave for court services or appearances, the agency may require an employee serving as a witness or juror or party litigant to take personal leave, compensatory leave, or leave without pay (where personal leave and compensatory leave have been exhausted) if the employee's court service or appearance is not verified by the clerk of the court. 1999 Miss. Op. Att'y Gen. 207.

The E-911 Commission may adopt the county personnel policy regarding the donation of leave to co-workers. 2002 Miss. Op. Att'y Gen. 569.

§ 25-3-92. Compensatory leave; administrative leave.

(1) When, in the opinion of the appointing authority, it is essential that a state employee work after normal working hours, the employee may receive credit for compensatory leave. Except as otherwise provided in Section 37-13-89, when, in the opinion of the appointing authority, it is essential that a state employee work during an official state holiday, the employee shall receive credit for compensatory leave.

(2) State employees may be granted administrative leave with pay. For the purposes of this section, "administrative leave" means discretionary leave with pay, other than personal leave or major medical leave.

(a) The appointing authority may grant administrative leave to any employee serving as a witness or juror or party litigant, as verified by the clerk of the court, in addition to any fees paid for such services, and such services or necessary appearance in any court shall not be counted as personal leave.

(b) The Governor or the appointing authority may grant administrative leave with pay to state employees on a local or statewide basis in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency. Any employee on a previously approved leave during the affected period shall be eligible for such administrative leave granted by the Governor or appointing authority, and shall not be charged for his previously approved leave during the affected period.

(c) The appointing authority may grant administrative leave with pay to any employee who is a certified disaster service volunteer of the American Red Cross who participates in specialized disaster relief services for the American Red Cross in this state and in states contiguous to this state when the American Red Cross requests the employee's participation. Administrative leave granted under this paragraph shall not exceed twenty (20) days in any twelve-month period. An employee on leave under this paragraph shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of claims against the state allowed under Chapter 46, Title 11, Mississippi Code of 1972. As used in this paragraph, the term "disaster" includes disasters designated at level II and above in American Red Cross national regulations and procedures.

HISTORY:

Laws, 1981, ch. 504, § 3; Laws, 1982, ch. 390, § 1; Laws, 1983, ch. 343, § 1, ch. 500, § 2; Laws, 1984, ch. 307, § 1; Laws, 1986, ch. 314; Laws, 1994, ch. 397, § 1; Laws, 1999, ch. 529, § 2; Laws, 2015, ch. 368, § 1, eff from and after July 1, 2015.

Cross References —

Compensatory leave for state employees required to work on legal holidays, see § 25-1-98.

Administrative leave for sickness beyond an employee's allotted days of earned sick leave, see § 25-3-95.

Authority of state personnel board and director with respect to rules and regulations governing state personnel system, see § 25-9-119.

Employment of agents of Mississippi Bureau of Narcotics as enforcement troopers, see § 45-3-9.

JUDICIAL DECISIONS

1. Particular cases.

Mississippi Personnel Board Rule 7.22. 4(B) adopts the language of Miss. Code Ann. § 25-3-92(2), which states, "'administrative leave' means discretionary leave with pay, other than personal leave or major medical leave." A state employee who was under investigation for alleged improper sexual conduct continued to receive full pay and benefits for the duration of the employee's leave, and the state agency was not required to give the employee the opportunity for a hearing within twenty days, even though Personnel Board Rule 9.20 states that an employee "suspended immediately with pay" must be given a hearing within twenty days, as the written notice placing the employee on administrative leave stated the leave was to be "until further notice"; thus, the employee was not denied due process. Davis v. Miss. State Dep't of Health, 856 So. 2d 485, 2003 Miss. App. LEXIS 286 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 674 (Miss. 2003).

OPINIONS OF THE ATTORNEY GENERAL

The Adjutant General is not entitled to compensatory leave under any provision of state law and need not providc written documentation of his work schedule except to the extent required by the Governor. 1992 Miss. Op. Att'y Gen. 212.

Employees that work hours in excess of their normal work period are entitled to compensatory time off in accordance with state law, irrespective of the requirements of federal law. 1992 Miss. Op. Att'y Gen. 444.

Under Section 25-3-92 the legislature did not intend for any accumulated unused compensatory leave to be counted as creditable service for the purposes of the retirement system. 1996 Miss. Op. Att'y Gen. 17.

Both the Commissioner of Corrections and the Deputy Commissioners come within the meaning of "employee", as used in the statute and are eligible for compensatory leave, when in the opinion of the appointing authority, it is essential that they work after normal hours. 1998 Miss. Op. Att'y Gen. 229.

§25-3-93. Personal leave.

(1)(a) Except as provided in subsection (1)(b), all employees and appointed officers of the State of Mississippi, who are employees as defined in Section 25-3-91, shall be allowed credit for personal leave computed as follows:

Continuous Service	Accrual Rate (Monthly)	Accrual Rate (Annually)
1 month to 3 years	12 hours per month	18 days per year

Continuous Service	Accrual Rate (Monthly)	Accrual Rate (Annually)
37 months to 8 years	14 hours per month	21 days per year
97 months to 15 years	16 hours per month	24 days per year
Over 15 years	18 hours per month	27 days per year

However, employees who were hired prior to July 1, 1984, who have continuous service of more than five (5) years but not more than eight (8) years shall accrue fifteen (15) hours of personal leave each month.

(b) Temporary employees who work less than a full workweek and part-time employees shall be allowed credit for personal leave computed on a pro rata basis. Faculty members employed by the eight (8) public universities on a nine-month contract, and employees of the public universities who do not contribute to the Mississippi Public Employees' Retirement System or the State Institutions of Higher Learning Optional Retirement Program, shall not be eligible for personal leave.

(2) For the purpose of computing credit for personal leave, each appointed officer or employee shall be considered to work not more than five (5) days each week. Leaves of absence granted by the appointing authority for one (1) year or less shall be permitted without forfeiting previously accumulated continuous service. The provisions of this section shall not apply to military leaves of absence. The time for taking personal leave, except when such leave is taken due to an illness, shall be determined by the appointing authority of which such employees are employed.

(3) For the purpose of Sections 25-3-91 through 25-3-99, the earned personal leave of each employee shall be credited monthly after the completion of each calendar month of service, and the appointing authority shall not increase the amount of personal leave to an employee's credit. It shall be unlawful for an appointing authority to grant personal leave in an amount greater than was earned and accumulated by the officer or employee.

(4) Employees are encouraged to use earned personal leave. Personal leave may be used for vacations and personal business as scheduled by the appointing authority and shall be used for illnesses of the employee requiring absences of one (1) day or less. Accrued personal or compensatory leave shall be used for the first day of an employee's illness requiring his absence of more than one (1) day. Accrued personal or compensatory leave may also be used for an illness in the employee's immediate family as defined in Section 25-3-95. There shall be no limit to the accumulation of personal leave. Upon termination of employment each employee shall be paid for not more than thirty (30) days of accumulated personal leave. Unused personal leave in excess of thirty (30) days shall be counted as creditable service for the purposes of the retirement system as provided in Sections 25-11-103 and 25-13-5.

(5) Any state law enforcement officer who is injured by wound or accident in the line of duty shall not be required to use earned personal leave during the period of recovery from such injury. As used in this subsection, the term "state law enforcement officer" means a person employed by a state agency who, as a

condition of his or her employment, is required by law to complete a course of study at the Law Enforcement Officers Training Academy.

(6) Any employee may donate a portion of his or her earned personal leave to another employee who is suffering from a catastrophic injury or illness, or to another employee who has a member of his or her immediate family who is suffering from a catastrophic injury or illness, in accordance with subsection (8) of Section 25-3-95.

HISTORY:

Laws, 1976, ch. 490, § 2; Laws, 1977, ch. 473, § 2; Laws, 1981, ch. 504, § 4; Laws, 1984, ch. 307, § 2; Laws, 1988, ch. 553, § 1; Laws, 1989, ch. 536, § 1; Laws, 1991, ch. 364, § 1; Laws, 1994, ch. 428, § 3; Laws, 1996, ch. 348, § 1; Laws, 1997, ch. 519, § 3; reenacted and amended, Laws, 1999, ch. 557, § 1; Laws, 2003, ch. 472, § 1; Laws, 2005, ch. 341, § 1; Laws, 2005, ch. 411, § 1; Laws, 2014, ch. 495, § 2, eff from and after passage (approved April 16, 2014).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an enacting error in the second sentence of (4). The word "or" was added following "employee requiring absences of one (1) day." The Joint Committee ratified the correction at its July 8, 2004, meeting.

Section 1 of ch. 341, Laws of 2005, effective from and after July 1, 2005, amended this section. Section 1 of ch. 411, Laws of 2005, effective from and after passage (approved March 16, 2005), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 341, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taken effect earlier.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the third sentence of (4) was corrected by substituting "...used for the first day of an employee's illness..." for "...used for the first day of an employees illness..."

Laws of 2014, ch. 495, § 1 provides:

"SECTION 1. This act shall be known and cited as the 'Gale Stauffer, Jr., and Joseph Maher Law Enforcement Appreciation Act of 2014'."

Cross References —

Payment to employee's beneficiary of money earned and not paid if employee dies having accumulated annual leave to his credit, see § 25-3-97.

Applicability of this section to the computation of creditable service of elected officials, see § 25-11-109.

Eight public universities generally, see Title 37, Chapters 113 through 127.

Employment of agents of Mississippi Bureau of Narcotics as enforcement troopers, see § 45-3-9.

JUDICIAL DECISIONS

1. No basis for termination.

Because an employee out on temporary total disability for a work-related injury was not on a leave of absence, a termination based on Miss. Code Ann. § 25-3-93(2) was not supported by substantial evidence; moreover, an employer provided no written policy relating to terminating employees who had been absent for more than one year. Moeller v. Miss. Dep't of Human Servs., 955 So. 2d 956, 2007 Miss. App. LEXIS 281 (Miss. Ct. App. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Municipal governing authorities have authority to adopt leave policy and provide for payment to terminated employees for unused personal leave up to maximum of thirty (30) days; if governing authorities have adopted such policy and employee upon termination has accumulated unused personal leave, he would be entitled to compensation within guidelines of adopted policy on same basis as other employees. 1990 Miss. Op. Att'y Gen. 192.

No statute provides maternity leave benefits for state employees; natural childbirth mother may use annual leave for pregnancy and/or childbirth, and state employee may use annual leave while taking care of adopted infant. 1992 Miss. Op. Att'y Gen. 508.

If former community college president had 14 days of unused accumulated personal leave for which he could be paid under state law at time he left college, he would be entitled to payment for 14 days he took during paid leave of absence to conduct business on behalf of college. 1992 Miss. Op. Att'y Gen. 637.

When employee is no longer performing any work for agency and has no plan or intention to return to work but is merely exhausting his or her personal leave before formally resigning position, termination of employment has effectively occurred as of date employee last worked; such employee would be entitled to receive payment for not more than thirty days accumulated leave, and all other leave is to be counted as creditable service for retirement purposes. 1992 Miss. Op. Att'y Gen. 698.

Limitation placed on appointing authority in granting earned and accumulated personal leave to employee is that said appointing authority can grant no more personal leave than that which has been accumulated or earned by employee. 1993 Miss. Op. Att'y Gen. 824.

If individual is employee occupying position in state service or non-state service, then individual will be eligible for personal and sick leave benefits. 1994 Miss. Op. Att'y Gen. 949.

A judge would be entitled to additional creditable service for retirement purposes in accordance with the provisions of sections 25-3-93 and 25-3-95. 1995 Miss. Op. Att'y Gen. 57.

The Governor or the appointing authority of the affected state agencies have the discretion, pursuant to Section 25-3-93(2)(b), to grant administrative leave to state employees previously placed in furlough status if federal funds have been made available to compensate such employees for the furlough period. 1995 Miss. Op. Att'y Gen. 820.

If the assistant district attorney's employment status with the state is being terminated in favor of an elected office, he is entitled to be paid for not more than thirty days of accumulated personal leave, with unused personal leave in excess of thirty days to be counted as creditable service for purposes of retirement, all as provided in Section 25-3-93(4). 1996 Miss. Op. Att'y Gen. 856.

Pursuant to Section 25-3-93(4) and 25-3-97(5) if the district attorneys have adopted leave policies identical to the state and those policies authorize the transfer of accumulated leave from one district attorney's office to another, similar to a transfer between state agencies, then all such accumulated leave would be transferable. There would be no authority for the former employer to make a lump sum payment under these circumstances. 1996 Miss. Op. Att'y Gen. 170.

A break in service would not include the lapse of one non-work day, but would include the acceptance of a lump sum payment for personal leave. See Section 25-3-95. 1996 Miss. Op. Att'y Gen. 170.

An agent of the Bureau of Narcotics, though classified as an enforcement officer after training by the Mississippi Highway Safety Patrol, is not the equivalent of an officer of the Highway Patrol and, except for certain described individuals, is not an officer of the Highway Patrol and, unlike the latter, must use earned major medical leave or personal leave during the period of recovery from injury, wound or accident sustained in the line of duty. 1998 Miss. Op. Att'y Gen. 768.

Bureau of Narcotics agents who have been designated as officers of the Mississippi Highway Safety Patrol do not have to expend earned major medical or personal leave while recuperating from on-duty injuries. 1998 Miss. Op. Att'y Gen. 111.

The statute does not apply to employees of a county school district. 2000 Miss. Op. Att'y Gen. 650.

Where an employee takes compensatory time for the last several weeks of his employment with a county prior to the effective date of his resignation, the employee is not eligible to continue to participate in State Retirement during such period. 2001 Miss. Op. Att'y Gen. 102.

Section 25-11-103(i) authorizes a political subdivision to tailor a local personnel policy of its own, affording more or less leave benefits than those afforded state employees. However, if a political subdivision, such as a water and sewer district, affords more leave benefits to its employees such leave policies may not enlarge the benefits afforded to such employees in the state retirement system and such leave should not be reported to the PERS. 2004 Miss. Op. Att'y Gen. 54.

§ 25-3-95. Major medical leave.

(1) All employees and appointed officers of the State of Mississippi, except employees of the public universities who do not contribute to the Mississippi Public Employees' Retirement System or the State Institutions of Higher

Learning Optional Retirement Program, shall accrue credits for major medical leave as follows:

Continuous Service	Accrual Rate (Monthly)	Accrual Rate (Annually)
1 month to 3 years	8 hours per month	12 days per year
37 months to 8 years	7 hours per month	10.5 days per year
97 months to 15 years	6 hours per month	9 days per year
Over 15 years	5 hours per month	7.5 days per year

Faculty members employed by the eight (8) public universities on a nine-month contract shall accrue credit for major medical leave as follows:

Continuous Service	Accrual Rate (Per Month)	Accrual Rate (Per Academic Year)
1 month to 3 years	13-⅓ hours per month	15 days per academic year
37 months to 8 years	14-$^1/_5$ hours per month	16 days per academic year
97 months to 15 years	15-$^2/_5$ hours per month	17 days per academic year
Over 15 years	16 hours per month	18 days per academic year

Part-time employees shall accrue major medical leave on a pro rata basis. There shall be no maximum limit to major medical leave accumulation. All unused major medical leave shall be counted as creditable service for the purposes of the retirement system as provided in Sections 25-11-103 and 25-13-5.

(2)(a) Major medical leave may be used for the illness or injury of an employee or member of the employee's immediate family as defined in subsection (3) of this section, only after the employee has used one (1) day of accrued personal or compensatory leave for each absence due to illness, or leave without pay if the employee has no accrued personal or compensatory leave; provided that faculty members employed by the eight (8) public universities on a nine-month basis may use major medical leave for the first day of absence due to illness. However, major medical leave may be used, without prior use of personal leave, to cover regularly scheduled visits to a doctor's office or a hospital for the continuing treatment of a chronic disease, as certified in advance by a physician. For the purposes of this section, "physician" means a doctor of medicine, osteopathy, dental medicine, podiatry or chiropractic. For each absence due to illness of thirty-two (32) consecutive working hours (combined personal leave and major medical leave) major medical leave shall be authorized only when certified by their attending physician.

(b) When an employee's absence is due to a work-related injury for which the employee is receiving temporary disability benefits under Section 71-3-17(b) or 71-3-21, the injured employee shall not use accrued personal and/or medical leave and receive workers' compensation benefits simultaneously if the combined receipt of both benefits results in the employee being paid, while absent due to the work-related injury, a total amount that exceeds one hundred percent (100%) of his wages earned in state employment at the time of injury. In such cases, the injured employee may use only as much of his accrued personal and/or medical leave as necessary, which may be fewer than eight (8) hours of accrued personal and/or major medical leave in a day, to constitute the difference between the amount of temporary disability workers' compensation benefits received and one hundred percent (100%) of his wages earned at the time of injury in state employment. It is the intent of the Legislature that no state employee who is absent and disabled from work due to a work-related injury shall receive more than one hundred percent (100%) of his wages earned in state employment at the time of injury through the use of accrued personal and/or medical leave combined with temporary disability benefits under the Workers' Compensation Law. The procedure for implementing this paragraph (b) shall be as directed by the applicable appointing authority. The receipt or payment of benefits in compliance with this paragraph (b) shall be considered the employee's exclusive remedy against the employer in accordance with Section 71-3-9.

(3) An employee may use up to three (3) days of earned major medical leave for each occurrence of death in the immediate family requiring the employee's absence from work. No qualifying time or use of personal leave will be required prior to use of major medical leave for this purpose. For the purpose of this subsection (3), the immediate family is defined as spouse, parent, stepparent, sibling, child, stepchild, grandchild, grandparent, son- or daughter-in-law, mother- or father-in-law or brother- or sister-in-law. Child means a biological, adopted or foster child, or a child for whom the individual stands or stood in loco parentis.

(4) Employees and appointed officers of the State of Mississippi having unused, accumulated sick leave or annual leave earned prior to July 1, 1984, shall be credited with major medical leave and personal leave as follows: All unused annual leave shall be credited as personal leave.

Unused sick leave shall be divided between major medical leave and personal leave at rates determined by the employee's sick leave balance on June 30, 1984. The rates of conversion shall be as follows:

Sick Leave Balance as of June 30, 1984	Percentage Converted to Personal Leave	Percentage Converted to Major Medical Leave
1 – 200 hours	20%	80%
201 – 400 hours	25%	75%
401 – 600 hours	30%	70%
601 or more hours	35%	65%

(5) Upon retirement from active employment each faculty member of the state-supported public universities who is employed on a nine-month basis shall receive credit and be paid for not more than thirty (30) days of unused major medical leave for service as a state employee. Unused major medical leave in excess of thirty (30) days shall be counted as creditable service for the

purposes of the retirement system as provided in Sections 25-11-103 and 25-13-5.

(6) Any state law enforcement officer who is injured by wound or accident in the line of duty shall not be required to use earned major medical leave during the period of recovery from such injury. As used in this subsection, the term "state law enforcement officer" means a person employed by a state agency who, as a condition of his or her employment, is required by law to complete a course of study at the Law Enforcement Officers Training Academy.

(7) For the purpose of Sections 25-3-91 through 25-3-99, the earned major medical leave of each employee shall be credited monthly after the completion of each calendar month, and the appointing authority shall not increase the amount of major medical leave to an employee's credit. It shall be unlawful for an appointing authority to grant major medical leave in an amount greater than was earned and accumulated by the officer or employee.

(8) Any employee may donate a portion of his or her earned personal leave or major medical leave to another employee who is suffering from a catastrophic injury or illness, as defined in Section 25-3-91, or to another employee who has a member of his or her immediate family who is suffering from a catastrophic injury or illness, in accordance with the following:

(a) The employee donating the leave (the "donor employee") shall designate the employee who is to receive the leave (the "recipient employee") and the amount of earned personal leave and major medical leave that is to be donated, and shall notify the donor employee's appointing authority or supervisor of his or her designation. The donor employee's appointing authority or supervisor then shall notify the recipient employee's appointing authority or supervisor of the amount of leave that has been donated by the donor employee to the recipient employee.

(b) The maximum amount of earned personal leave that an employee may donate to any other employee may not exceed a number of days that would leave the donor employee with fewer than seven (7) days of personal leave left, and the maximum amount of earned major medical leave that an employee may donate to any other employee may not exceed fifty percent (50%) of the earned major medical leave of the donor employee. All donated leave shall be in increments of not less than twenty-four (24) hours.

(c) An employee must have exhausted all of his or her earned personal leave and major medical leave before he or she will be eligible to receive any leave donated by another employee.

(d) Before an employee may receive donated leave, he or she must provide his or her appointing authority or supervisor with a physician's statement that states the beginning date of the catastrophic injury or illness, a description of the injury or illness, and a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

(e) If an employee is aggrieved by the decision of his or her appointing authority that the employee is not eligible to receive donated leave because the injury or illness of the employee or member of the employee's immediate family is not, in the appointing authority's determination, a catastrophic injury or illness, the employee may appeal the decision to the employee appeals board.

(f) Beginning on March 25, 2003, the maximum period of time that an employee may use donated leave without resuming work at his or her place of employment is ninety (90) days, which commences on the first day that the recipient employee uses donated leave. Donated leave that is not used because a recipient employee has used the maximum amount of donated leave authorized under this paragraph shall be returned to the donor employees in the manner provided under paragraph (g) of this subsection.

(g) If the total amount of leave that is donated to any employee is not used by the recipient employee, the donated leave shall be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees.

(h) The failure of any appointing authority or supervisor of any employee to properly deduct an employee's donation of leave to another employee from the donor employee's earned personal leave or major medical leave shall constitute just cause for the dismissal of the appointing authority or supervisor.

(i) No person through the use of coercion, threats or intimidation shall require or attempt to require any employee to donate his or her leave to another employee. Any person who alleges a violation of this paragraph shall report the violation to the executive head of the agency by whom he or she is employed or, if the alleged violator is the executive head of the agency, then the employee shall report the violation to the State Personnel Board. Any person found to have violated this paragraph shall be subject to removal from office or termination of employment.

(j) No employee can donate leave after tendering notice of separation for any reason or after termination.

(k) Recipient employees of agencies with more than five hundred (500) employees as of March 25, 2003, may receive donated leave only from donor employees within the same agency. A recipient employee in an agency with five hundred (500) or fewer employees as of March 25, 2003, may receive donated leave from any donor employee.

(*l*) In order for an employee to be eligible to receive donated leave, the employee must:

(i) Have been employed for a total of at least twelve (12) months by the employer on the date on which the leave is donated; and

(ii) Have been employed for at least one thousand two hundred fifty (1,250) hours of service with such employer during the previous twelve-month period from the date on which the leave is donated.

(m) Donated leave shall not be used in lieu of disability retirement.

(n) For the purposes of this subsection, "immediate family" means spouse, parent, stepparent, sibling, child or stepchild.

(9) An employee may use up to six (6) weeks of earned major medical leave for the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement.

HISTORY:

Laws, 1976, ch. 490, § 3; Laws, 1981, ch. 5; Laws, 1982, ch. 390, § 2; Laws, 1983, ch. 343, § 2; Laws, 1984, ch. 307, §§ 3, 4; Laws, 1988, ch. 553, § 2; Laws, 1991, ch. 364, § 2; Laws, 1993, ch. 451, § 1; Laws, 1994, ch. 428, § 4; Laws, 1996, ch. 348, § 2; Laws, 1997, ch. 519, § 2; reenacted and amended, Laws, 1999, ch. 557, § 2; Laws, 2003, ch. 472, § 2; Laws, 2005, ch. 341, § 2; Laws, 2005, ch. 411, § 2; Laws, 2008, ch. 501, § 1; Laws, 2014, ch. 342, § 1; Laws, 2014, ch. 495, § 3, eff from and after passage (approved April 16, 2014).

Joint Legislative Committee Note —

Section 2 of ch. 341, Laws of 2005, effective from and after July 1, 2005, amended this section. Section 2 of ch. 411, Laws of 2005, effective from and after passage (approved March 16, 2005), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 341, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taken effect earlier.

Section 1 of ch. 342, Laws of 2014, effective from and after July 1, 2014 (approved March 14, 2014), amended this section. Section 3 of ch. 495, Laws of 2014, effective from and after passage (approved April 16, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Notes —

Laws of 2014, ch. 495, § 1 provides:

"SECTION 1. This act shall be known and cited as the 'Gale Stauffer, Jr., and Joseph Maher Law Enforcement Appreciation Act of 2014'."

Cross References —

Use of personal leave for the first day an employee's illness, and for an illness in the employee's immediate family, see § 25-3-93.

Applicability of this section to the computation of creditable service of elected officials, see § 25-11-109.

Eight public Universities generally, see Title 37, chapters 113 through 127.

Employment of agents of Mississippi Bureau of Narcotics as enforcement troopers, see § 45-3-9.

Worker's Compensation Law, see §§ 71-3-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Municipalities may adopt leave policies which exceed the benefits available to state employees via statute. 1992 Miss. Op. Att'y Gen. 361.

No statute provides maternity leave benefits for state employees; natural childbirth mother may use major medical leave for pregnancy and/or childbirth. 1992 Miss. Op. Att'y Gen. 508.

A judge would be entitled to additional creditable service for retirement purposes in accordance with the provisions of sections 25-3-93 and 25-3-95. 1995 Miss. Op. Att'y Gen. 57.

A break in service would not include the lapse of one non-work day, but would include the acceptance of a lump sum payment for personal leave. See Section 25-3-93 1996 Miss. Op. Att'y Gen. 170.

Although Miss. Code Sections 25-3-91 and 25-3-95, which permit state employees to donate a certain portion of their earned personal leave or major medical leave to another employee under some circumstances, do not apply to municipal employees, municipalities may adopt ordinances or resolutions providing for a similar program in a municipality in the absence of a state statute governing a similar municipal employee leave program. 1997 Miss. Op. Att'y Gen. 361.

An agent of the Bureau of Narcotics, though classified as an enforcement officer after training by the Mississippi Highway Safety Patrol, is not the equivalent of an officer of the Highway Patrol and, except for certain described individuals, is not an officer of the Highway Patrol and, unlike the latter, must use earned major medical leave or personal leave during the period of recovery from injury, wound or accident sustained in the line of duty. 1998 Miss. Op. Att'y Gen. 768.

Bureau of Narcotics agents who have been designated as officers of the Mississippi Highway Safety Patrol do not have to expend earned major medical or personal leave while recuperating from on-duty injuries. 1998 Miss. Op. Att'y Gen. 111.

Provided a leave policy has been lawfully adopted, and if such policy tracks the language as found in the statute, the medical evidence required must be such as to support the employer's finding that the employee's physical or mental condition is such that the employee can no longer work in such a capacity for state government or its equivalent under the adopted policy; such evidence may include certification by a medical doctor of such in capacity. 1998 Miss. Op. Att'y Gen. 313.

In the absence of any provision under state law for a municipal leave donation program, a municipality under the authority of home rule may adopt or enact a program similar to the one applicable to state employees under subsection (8) of this section. 1999 Miss. Op. Att'y Gen. 372.

The phrase "hours of service" as used in subdivision (8)(*l*)(ii) of this section includes actual hours worked in addition to any paid time off using accrued vacation or medical leave. The phrase does not include any unpaid leave. 2003 Miss. Op. Att'y Gen. 308.

Section 25-11-103(i) authorizes a political subdivision to tailor a local personnel policy of its own, affording more or less leave benefits than those afforded state employees. However, if a political subdivision, such as a water and sewer district, affords more leave benefits to its employees such leave policies may not enlarge the benefits afforded to such employees in the state retirement system and such leave should not be reported to the PERS. 2004 Miss. Op. Att'y Gen. 54.

§ 25-3-97. Records; final payments upon leaving state employment; affidavits as to absences; transfer of accrued leave; employee's death.

(1) All organizations shall keep accurate records of the leave accumulated and used by the officers and employees thereof.

(2) The appointing authority in nonstate service agencies within the meaning of Section 25-9-107 will develop rules for proper maintenance of leave records. The rules shall include provisions which shall keep the employee informed on a monthly basis as to his accumulated leave balances. For accounting purposes an employee's anniversary date is the date of employment to full-time permanent or provisional service in state government.

(3) The appointing authority in nonstate service agencies, in conjunction with the State Fiscal Officer, will develop rules for the final payment of accrued leave at such time that an employee leaves state employment. At no time will an employee be paid for accrued leave while still employed in state service, except that major medical leave pay may be made as heretofore provided. No payment will be made for accrued major medical leave except that an employee who presents medical evidence that his physical condition is such that he can no longer work in a capacity of state government may be paid for not more than one hundred twenty (120) days of earned major medical leave.

(4) The State Fiscal Officer, before issuing a warrant to any of said employees for the payment of his salary, shall be furnished by each appointing authority any reports as required by the State Fiscal Officer as to absences in the department. The appointing authority shall make the required deduction from the salary as indicated on the affidavit in submitting their payroll requisitions to the Department of Finance and Administration, or if the State Fiscal Officer learns of such excessive absence from some other source, he is empowered to make such deduction, unless such absence shall have been for official business, personal leave, or by the permission of the Governor previously obtained. The State Fiscal Officer may promulgate rules on reporting absences in the agencies.

(5) All accrued leave, both major medical and personal leave, earned by employees shall be transferrable between or among any and all state agencies,

junior colleges and senior colleges. Each appointing authority shall be furnished a statement of accrued leave at the time of transfer by an employee.

(6) Should an employee die having accumulated personal leave as provided in Section 25-3-93, the wages or salary which would have been paid to such employee during his leave shall be paid to the person designated by such employee for this purpose or, in the absence of such designation, to the beneficiary of such employee as recorded with the Public Employees' Retirement System. Accumulated leave shall be considered for the purpose of Sections 25-3-91 through 25-3-99 as wages or salary earned and not paid.

HISTORY:

Laws, 1976, ch. 490, § 4; Laws, 1977, ch. 473, § 3; Laws, 1981, ch. 504, § 6; Laws, 1984, ch. 307, § 5, eff from and after July 1, 1984; Laws, 1996, ch. 348, § 3; Laws, 1998, ch. 366, § 1, eff from and after July 1, 1998.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

OPINIONS OF THE ATTORNEY GENERAL

State law and regulations governing the Statewide Personnel System do not reflect a right of state employees classified as exempt under the Federal Labor Standards Act to payment for accumulated compensatory time. 1992 Miss. Op. Att'y Gen. 444.

Limitation placed on appointing authority in granting earned and accumulated personal leave to employee is that said appointing authority can grant no more personal leave than that which has been accumulated or earned by employee. 1993 Miss. Op. Att'y Gen. 824.

Pursuant to Section 25-3-93(4) and 25-3-97(5) if the district attorneys have adopted leave policies identical to the state and those policies authorize the transfer of accumulated leave from one district attorney's office to another, similar to a transfer between state agencies, then all such accumulated leave would be transferable. There would be no authority for the former employer to make a lump sum payment under these circumstances. 1996 Miss. Op. Att'y Gen. 170.

Section 25-3-97 refers to persons appointed to a position in state service or non-state service as defined in Section 25-9-107. 1998 Miss. Op. Att'y Gen. 313.

The statute authorizes the transfer of leave when a state employee transfers from one state agency to another, but does not provide for the transfer of leave accrued by employees who are not state service or nonstate service. 1998 Miss. Op. Att'y Gen. 314.

Consistent with and pursuant to IRS Revenue Ruling 86-109, neither federal nor state income taxes would be deducted from payments of accrued wages or vacation pay issued to a deceased state employee's designee or successor. 1999 Miss. Op. Att'y Gen. 230.

An employee who transferred between community colleges prior to July 1, 1998, is not entitled to leave that accumulated at the first community college; further, the employee could not have transferred leave under the pre-1998 statutory language, which allowed transfer of accumulated leave between state agencies. 2001 Miss. Op. Att'y Gen. 260.

Community and junior colleges are not covered by the state's leave law, but retain the authority to adopt their own leave policies so long as provisions therein for retirement credit do not exceed the state law provisions. 2003 Miss. Op. Att'y Gen. 331.

§ 25-3-99. Prior payment of leave earned unaffected.

Nothing in Sections 25-3-91 through 25-3-99 shall be construed to deny the payment of leave earned prior to July 1, 1976.

HISTORY:
Laws, 1976, ch. 490, § 5, eff from and after July 1, 1976.

§ 25-3-101. Promulgation of rules.

The state personnel board shall promulgate rules for the administration of Sections 25-3-91 through 25-3-99, which shall be binding upon state service agencies within the meaning of Section 25-9-107.

HISTORY:
Laws, 1981, ch. 504, § 7, eff from and after July 1, 1981.

§ 25-3-103. Mississippi Organ Donor Leave Law; legislative intent; definitions; paid leave; number of days of leave allowed; approval required; adoption of rules governing organ donation leave.

(1) This section may be cited as the "Mississippi Organ Donor Leave Act."

(2) This section is intended to provide time off with pay for state employees who donate an organ, bone marrow, blood or blood platelets.

(3) As used in this section:

(a) "Agency" means any branch, department, board, committee or commission of state government, but does not include units of local government or school districts.

(b) "Department" means the Mississippi Department of Finance and Administration.

(c) "Participating employee" means a permanent full-time or part-time employee who has been employed by an agency for a period of six (6) months or more and who donates an organ, bone marrow, blood or blood platelets.

(4)(a) On request, a participating employee subject to this section may be entitled to organ donation leave with pay.

(b) An employee may use (i) up to thirty (30) days of organ donation leave in any twelve-month period to serve as a bone marrow donor, (ii) up to thirty (30) days of organ donation leave in any twelve-month period to serve as an organ donor, (iii) up to one (1) hour to donate blood every fifty-six (56) days, and (iv) up to two (2) hours to donate blood platelets in accordance with appropriate medical standards established by the American Red Cross or other nationally recognized standards. Leave under subparagraph (iv) may not be granted more than twenty-four (24) times in a twelve-month period.

(c) An employee may use organ donation leave or other leave authorized in paragraph (b) of this section only after obtaining approval from the employee's agency.

(d) An employee shall not be required to use accumulated sick or vacation leave time before being eligible for organ donor leave.

(e) The department must adopt rules governing organ donation leave, including rules that (i) establish conditions and procedures for requesting and approving leave, and (ii) require medical documentation of the proposed organ or bone marrow donation before leave is approved by the employing agency.

HISTORY:

Laws, 2004, ch. 336, § 1, eff from and after July 1, 2004.

CHAPTER 4.

ETHICS IN GOVERNMENT

Article 1. Mississippi Ethics Commission. 25-4-1
Article 3. Conflict of Interest; Improper Use of Office. 25-4-101

ARTICLE 1.

MISSISSIPPI ETHICS COMMISSION.

Sec.
25-4-1. Legislative purpose.
25-4-3. Definitions.
25-4-5. Creation of commission; composition; appointment of members; terms of office; successors; appointment of member by Chief Justice of Supreme Court.
25-4-7. Organizational meeting of commission.
25-4-9. Chairman and vice-chairman of commission.
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25-4-13. Compensation.
25-4-15. Executive director; employees.
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25-4-19. Powers of commission.
25-4-21. Proceedings upon complaints.
25-4-23. Confidentiality of proceedings and records.
25-4-25. Persons required to file statement of economic interest.
25-4-27. Contents of statement of economic interest.
25-4-28. Disclosure of holdings of certain blind trusts not required under certain circumstances.
25-4-29. Filing dates for statements.
25-4-31. Fines and penalties.

§ 25-4-1. Legislative purpose.

The Legislature hereby declares it essential to the proper operation of democratic government that public officials and employees be independent and impartial; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for private gain other than the remuneration provided by law; that there be public confidence in the integrity of government; and that public officials be assisted in determinations of conflicts of interest.

HISTORY:

Laws, 1979, ch. 508, § 1; reenacted, Laws, 1982, ch. 488, § 1; reenacted, Laws, 1986, ch. 348, § 1, reenacted, Laws, 1990, ch. 491, § 1; Laws, 1995, ch. 360, § 1; reenacted without change, Laws, 1998, ch. 350, § 1, eff from and after June 8, 1998 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 1.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

RESEARCH REFERENCES

Law Reviews.
Legislator Guilty of Misdemeanor if He Has Direct Interest in Contract Authorized by Legislature. 52 Miss. L. J. 659, September 1982.

§ 25-4-3. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Advisory boards or commissions" means committees created solely to provide technical or professional knowledge or expertise to a parent organization, and whose members exercise no direct authority to expend public funds other than reimbursement for personal expenses incurred as a result of a member's service on the advisory board;

(b) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint-stock company, receivership, trust or other legal entity or undertaking organized for economic gain or a nonprofit corporation or other such entity, association or organization receiving public funds;

(c) "Candidate for public office" means an individual who has filed the necessary documents or papers to appear as a candidate for nomination for election or election to any elective office existing under the laws of the State of Mississippi, including primary, special or general elections. The term "candidate" does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971;

(d) "Commission" means the Mississippi Ethics Commission;

(e) "Compensation" means money or thing of value received, or to be received, from any person for services rendered or to be rendered;

(f) "Household member" means:

(i) The spouse of the public servant; or

(ii) Any person over the age of twenty-one (21) who resided in the public servant's household during the entire reporting period.

(g) "Income" means money or thing of value received, or to be received, from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty or any combination thereof;

(h) "Person" means any individual, firm, business, corporation, association, partnership, union or other legal entity;

(i) "Public employee" means any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the Mississippi State Legislature or by the governing body of any political subdivision thereof, or any other body politic within the State of Mississippi;

(j) "Public funds" means all monies, whether federal, state, district or local;

(k) "Public official" means:

(i) Any elected official of the State of Mississippi or any political subdivision thereof or any other body politic within the State of Mississippi; or

(ii) Any member, officer, director, commissioner, supervisor, chief, head, agent or employee of the State of Mississippi, or any agency thereof, of any political subdivision of the State of Mississippi, of any body politic within the State of Mississippi, or of any public entity created by or under the laws of the State of Mississippi or by executive order of the Governor of the state, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds;

(*l*) "Public servant" means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the State of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

HISTORY:

Laws, 1979, ch. 508, § 2; reenacted and amended, Laws, 1982, ch. 488, § 2; reenacted, Laws, 1986, ch. 348, § 2; reenacted, Laws, 1990, ch. 491, § 2; Laws, 1995, ch. 360, § 2; reenacted without change, Laws, 1998, ch. 350, § 2; Laws, 2008, ch. 562, § 1, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 2.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 1.

Federal Aspects—

Section 301 of the Federal Election Campaign Act of 1971 is codified in 2 USCS § 431.

§ 25-4-5. Creation of commission; composition; appointment of members; terms of office; successors; appointment of member by Chief Justice of Supreme Court.

(1) There is hereby created the Mississippi Ethics Commission which shall be composed of eight (8) members, each of whom shall be a qualified elector of the State of Mississippi, of good moral character and integrity.

(2) Two (2) members of the commission shall be appointed by each of the following officers in strict accordance with the above standards: the Governor, the Lieutenant Governor, the Speaker of the House of Representatives and the

Chief Justice of the Mississippi Supreme Court. Not more than one (1) person appointed by each appointing authority shall be an elected official.

(3) The members of the initial commission shall be appointed for terms of office expiring one (1), two (2), three (3) and four (4) years, respectively, from November 15, 1979, the members appointed by the Governor having a one-year term and a four-year term, the members appointed by the Lieutenant Governor having a two-year term and a three-year term, the members appointed by the Speaker having a three-year term and a two-year term, and the members appointed by the Chief Justice having a four-year term and a one-year term.

(4) Successors to the members of the initial commission shall each be appointed for terms of four (4) years and until their successors are appointed and have been duly qualified.

(5) If any of the above-listed appointing authorities should fail to make his appointment to the initial commission within forty-five (45) days after November 15, 1979, fail to fill a vacancy within forty-five (45) days after such vacancy occurs, or fail to make his appointment for a full term to the commission, then the Chief Justice of the Mississippi Supreme Court shall make such appointment; provided, however, that the term of such appointee shall be for the period prescribed for the appointment by the authority who was to have made the appointment but who failed to do so. If at any time there should be a vacancy on the commission, a successor member to serve for the unexpired term applicable to such vacancy shall be appointed by the same appointing authority as the member whose unexpired term such successor is to fill.

(6) Any member of the commission who is indicted for any felony may be suspended by the commission from service on the commission. A commission member who is convicted of a misdemeanor involving moral turpitude or convicted of any felony shall be ineligible to serve and the member's position on the commission shall be vacant and subject to reappointment as for other vacancies.

HISTORY:

Laws, 1979, ch. 508, § 3(1)-(5); reenacted, Laws, 1982, ch. 488, § 3; reenacted, Laws, 1986, ch. 348, § 3; reenacted, Laws, 1990, ch. 491, § 3; Laws, 1995, ch. 360, § 3; reenacted without change, Laws, 1998, ch. 350, § 3; Laws, 2008, ch. 562, § 2, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 3.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 2.

JUDICIAL DECISIONS

1. In general.

Step-son of asphalt company owner, who was also a governmental board member, bid on public construction project, and the step-son was awarded the project; the Mississippi Ethics Commission erred in determining that step-son was a relative because Miss. Code Ann. § 25-4-103(q) was plain, clear, and unambiguous, and "step-son" was not included in the statutory definition of relative. Miss. Ethics Comm'n v. Grisham, 957 So. 2d 997, 2007 Miss. LEXIS 328 (Miss. 2007).

Statute providing that proceedings and records of state Ethics Commission were to be kept confidential, would not authorize Commission to disobey properly ordered subpoena from state Supreme Court, issued at behest of Committee on Professional Responsibility; Commission is a statutory commission subordinate to Supreme Court and its agencies. Mississippi Ethics Comm'n v. Committee on Professional Responsibility of the Miss. Bar, 672 So. 2d 1222, 1996 Miss. LEXIS 145 (Miss. 1996).

In declaratory judgment action brought by State Ethics Commission regarding conflicts of interest involving public officials, collateral attack upon Commission's membership, alleging unconstitutional and illegal appointment, could not be allowed. Frazier v. State, 504 So. 2d 675, 1987 Miss. LEXIS 2394 (Miss. 1987).

§ 25-4-7. Organizational meeting of commission.

As soon as all of the initial members of the commission have been appointed, the Chief Justice of the Mississippi Supreme Court shall call and provide for the holding of an organizational meeting of the commission; provided, however, in no instance shall such meeting be set for less than forty-five (45) days nor more than sixty (60) days after November 15, 1979.

HISTORY:

Laws, 1979, ch. 508, § 3(6); reenacted, Laws, 1982, ch. 488, § 4; reenacted, Laws, 1986, ch. 348, § 4; reenacted, Laws, 1990, ch. 491, § 4; Laws, 1995, ch. 360, § 4; reenacted without change, Laws, 1998, ch. 350, § 4, eff from and after June 8, 1998 (date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 4.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the text of the section was corrected by substituting "...nor more than sixty (60) days after November 15, 1979..." for "...nor more than sixty (60) days after the effective date of this chapter..."

§ 25-4-9. Chairman and vice-chairman of commission.

The commission shall annually elect one (1) member to serve as chairman of the commission and one (1) member to serve as vice chairman. The vice chairman shall act as chairman in the absence or upon the disability of the chairman or in the event of a vacancy of the office of the chairman.

HISTORY:

Laws, 1979, ch. 508, § 3(7); reenacted, Laws, 1982, ch. 488, § 5; reenacted, Laws, 1986, ch. 348, § 5; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 5; reenacted without change, Laws, 1998, ch. 350, § 5, eff from and after June 8, 1998 (date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 5.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

§ 25-4-11. Quorum; vacancy in commission.

(1) Five (5) members of the commission shall constitute a quorum. Five (5) members of the commission shall vote in the affirmative before any official action can be taken by the commission. Execution of such official action may be delegated to the chairman or executive director of the commission.

(2) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission subject to the requirements of subsection (1) of this section.

HISTORY:

Laws, 1979, ch. 508, § 3(8)(9); reenacted, Laws, 1982, ch. 488, § 6; reenacted, Laws, 1986, ch. 348, § 6; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 6; reenacted without change, Laws, 1998, ch. 350, § 6, eff from and after June 8, 1998 (date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 6.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

§ 25-4-13. Compensation.

Members of the Mississippi Ethics Commission shall, while serving on business of the commission, be entitled to receive as compensation a per diem, as is provided by law, not to exceed Three Thousand One Hundred Twenty-five Dollars ($3,125.00) annually, in addition to any actual and necessary expenses incurred in the performance of the official duties of the commission.

HISTORY:

Laws, 1979, ch. 508, § 3(10); Laws, 1980, ch. 560, § 6; reenacted, Laws, 1982, ch. 488, § 7; reenacted, Laws, 1986, ch. 348, § 7; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 7; reenacted without change, Laws, 1998, ch. 350, § 7, eff from and after June 8, 1998 (date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 7.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 25-4-15. Executive director; employees.

(1) The commission shall appoint an executive director to serve at the pleasure of the commission. The executive director shall possess a high degree

of professional competence and integrity. The executive director shall be responsible for the administrative operations of the commission and shall perform other such duties within its powers as may be delegated or assigned from time to time by regulations or orders of the commission. The commission, by and through its executive director, may employ the personnel necessary to properly discharge the duties and responsibilities of the commission, subject to budgetary limitations. Such personnel shall possess a high degree of professional competence and integrity in the area in which employed.

(2) All employees of the commission shall be excluded from the provisions of Section 25-9-101 et seq., relating to the State Personnel System.

HISTORY:

Laws, 1979, ch. 508, § 3(11)(12); reenacted, Laws, 1982, ch. 488, § 8; reenacted, Laws, 1986, ch. 348, § 8; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 8; reenacted without change, Laws, 1998, ch. 350, § 8; Laws, 2008, ch. 562, § 3, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 8.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 3.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-4-15 is sufficient authority for the Mississippi Ethics Commission to delegate its authority to issue subpoenas to its executive director once an official investigation in the matter has been initiated by the Commission. 1996 Miss. Op. Att'y Gen. 800.

§ 25-4-17. Duties of commission.

The commission shall, in addition to any other duties prescribed by law:

(a) Prepare and publish a manual setting forth recommended uniform methods of accounting and reporting for use by persons required to file statements of economic interest pursuant to the provisions of this chapter;

(b) Prescribe forms for statements of economic interest required to be filed pursuant to this chapter and furnish such forms to persons required to file such statements of economic interest pursuant to this chapter;

(c) Accept and file any statements or information voluntarily supplied by persons required to file statements of economic interest under this chapter that exceeds the requirements of this chapter;

(d) Develop and maintain a filing, coding and cross-indexing system of statements of economic interest, complaints, responses and other actions undertaken by the commission pursuant to this chapter;

(e) Make statements of economic interest which are required to be filed by this chapter available by means of the commission's Internet Web site on or before January 1, 2010, as well as at the physical office location of the commission for public inspection and copying during regular business hours;

(f) Preserve such statements of economic interest for a period of seven (7) years from the date of their receipt;

(g) Establish rules and regulations in furtherance of the purposes of this chapter and to insure and maintain the confidentiality and integrity of the commission, its proceedings, investigations and findings, it being the intent of this chapter to promote high standards of competence and conduct by the commission and its staff, and to insure that all matters designated as confidential shall remain confidential; provided, however, that nothing in this chapter shall be construed to prohibit the commission, in its discretion, from releasing information to the public relating to its findings, proceedings, or investigations, or from holding open meetings on nonconfidential matters;

(h) Study the body of Mississippi criminal law pertaining to public officials and report its findings and recommendations in summary form to each regular session of the Legislature;

(i)(i) Have the authority, in its discretion, to issue advisory opinions with regard to any of such standards of conduct set forth in Article 3 of this chapter. When any public official requests in writing such an advisory opinion and has stated all the facts to govern such opinion, and the commission has prepared and delivered such opinion with references thereto, there shall be no civil or criminal liability accruing to or against any such public official who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No opinion shall be given or considered if said opinion would be given after judicial proceedings are commenced.

All advisory opinions issued pursuant to the provisions of this paragraph shall be made public and shall be issued within ninety (90) days of written request. The request for an advisory opinion shall be confidential as to the identity of the individual making the request. The commission shall, so far as practicable and before making public, an advisory opinion issued under the provisions of this paragraph, make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion;

(ii) Have the authority, in its discretion, to authorize the executive director to issue written opinions in regard to any standards of conduct set forth in Article 3 of this chapter.

1. Any written opinion of the executive director shall be based upon prior opinions issued by the commission or reported court decisions of Mississippi courts, is not binding on the commission, shall not be published, and shall be ratified or rejected by the commission at the next subsequent meeting of the commission.

2. If the commission ratifies the opinion, the requestor shall not be liable for funds described in the request for opinion, and the requestor shall enjoy the immunity from liability set forth in subparagraph (i).

3. If the commission rejects the opinion, the requestor shall not be

liable for funds described in the request for opinion that are paid before receipt of notice that the opinion had been rejected by the commission.

(j) Within ninety (90) days, issue advisory opinions, upon written request by any individual required to file a statement of economic interest under the provisions of Section 25-4-25, pertaining to the content of the statement of economic interest which such individual is required to file under the provisions of Section 25-4-27. When such an advisory opinion is issued pursuant to a complete and accurate request, then there shall be no liability, civil or criminal, accruing to or against the individual requesting such opinion who, in good faith, follows the direction of the opinion and makes disclosure in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without substantial support. No opinion shall be given or considered if such opinion is given after suit is filed or prosecution begun. All requests for advisory opinions and all advisory opinions issued pursuant to the provisions of this paragraph shall be confidential and the commission shall not publicly disclose any advisory opinion issued or the fact that an advisory opinion has been requested or issued unless the individual requesting the opinion gives his permission, in writing, to the commission; and

(k) Maintain an Internet Web site capable of supporting the public information access and filing capabilities required under this chapter.

HISTORY:

Laws, 1979, ch. 508, § 4; reenacted and amended, Laws, 1982, ch. 488, § 9; reenacted, Laws, 1986, ch. 348, § 9; Laws, 1988, ch. 546, § 1; reenacted, Laws, 1990, ch. 491, § 9; Laws, 1995, ch. 360, § 9; reenacted and amended, Laws, 1998, ch. 350, § 9; Laws, 2008, ch. 562, § 4, August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 9.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 4.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in this section were corrected as follows: in (i)(i), "...set forth in Article 3 of this chapter..." was substituted for "...set forth in Article 3, Chapter 4, Title 25, Mississippi Code of 1972...," and in (i)(ii), "Any written opinion of the executive director...is not binding..." was substituted for "Any written opinion of the executive director...are not binding..."

JUDICIAL DECISIONS

1. In general.

If Attorney General declines to file suit referred to him by state agency such as State Ethics Commission, where matter is of serious concern to state government, then that agency, if it determines its duties and responsibilities to so require, is at least entitled to have some court pass upon whether it should have its full day in court; if court determines that subject matter of litigation is one which agency is called upon to protect and enforce, agency should have full day in court, including right to legal representation; Attorney General's refusal to represent agency does not deprive court of authority to keep jurisdiction and entertain action; in event of disagreement, court and not

Attorney General should make final determination as to whether or not agency is carrying out lawful functions for which it was created. Frazier v. State, 504 So. 2d 675, 1987 Miss. LEXIS 2394 (Miss. 1987).

§ 25-4-18. Opinions of Attorney General as to ethical situations concerning individual legislators.

(1) The appropriate committee designated by the Senate or the House of Representatives of the State of Mississippi to deal with ethical matters of their respective body may request, in writing, an opinion from the Attorney General as to real or hypothetical situations concerning a member of their respective body, but only upon request of such member. The Attorney General shall issue his opinion, in writing, in response to such request.

(2) When a request pursuant to subsection (1) of this section shall have stated all the facts to govern such opinion and an opinion shall have been prepared and delivered with reference thereto, there shall be no liability, civil or criminal, accruing to or against the member requesting the opinion who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without substantial support. No opinion shall be given or considered if such opinion is requested after suit is filed or prosecution begun.

(3) All requests for opinions and all opinions issued pursuant to the provisions of this section shall be confidential and neither the Attorney General nor the committee shall publicly disclose any opinion issued or the fact that an opinion has been requested or issued unless the member requesting the opinion gives his permission, in writing, to the appropriate committee of his respective house.

(4) The provisions of this section shall be supplemental and in addition to any other statute.

HISTORY:

Laws, 1982, ch. 488, § 10; reenacted, Laws, 1986, ch. 348, § 10; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 10; reenacted without change, Laws, 1998, ch. 350, § 10, effective from and after June 8, 1998 (date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 10.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws, 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws, 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Duty of Attorney General to give written opinions, generally, see § 7-5-25.

§ 25-4-19. Powers of commission.

The commission shall have the authority to do the following:

(a)(i) Make investigations, as provided in Section 25-4-21, with respect to statements of economic interest filed pursuant to this chapter and with respect to alleged failures to file any statement of economic interest as required pursuant to this chapter;

(ii) Administratively impose a civil penalty as provided in Sections 25-4-29 and 25-4-109;

(b) Request the assistance of the Attorney General, the Performance Evaluation and Expenditure Review Committee, the Department of Audit and any other governmental agency or political subdivision in the conduct of any investigation in which a particular resource of an agency may be needed;

(c) Administer oaths and issue and serve subpoenas upon any witness or for the production of documents before the commission, and such subpoenas may include a protective order requiring confidentiality of the subpoena, the subject matter, and any documents subpoenaed, and such subpoenas shall be enforced by the courts of this state;

(d) Report when necessary, as provided in Section 25-4-21(e), to the Attorney General and appropriate district attorney;

(e) Upon a complaint signed under oath by any person, including any member of the commission or its staff or referred to the commission by the Joint Legislative Committee on Performance Evaluation and Expenditure Review, investigate, as provided in Section 25-4-21, any alleged violation of law by public officials or public employees;

(f) Seek, in the name of and for the use and benefit of the State of Mississippi, or a political subdivision thereof, restitution or other equitable or legal remedies in civil law to recover public funds or property unlawfully taken, as well as any unjust enrichment, although not public funds, and to recover on bonds where the state or a political subdivision thereof is the beneficiary;

(g) Employ an attorney or attorneys to:

(i) Serve as a special prosecutor to assist the Attorney General or a district attorney; and

(ii) File actions to seek restitution or other remedies to recover funds as provided in paragraph (f) of this section;

(h) Publish notices for posting in governmental offices that outline the jurisdiction and authority of the commission and the procedure for filing complaints and requesting opinions.

HISTORY:

Laws, 1979, ch. 508, § 5; reenacted and amended, Laws, 1982, ch. 488, § 11; reenacted, Laws, 1986, ch. 348, § 11; Laws, 1988, ch. 546, § 2; reenacted, Laws, 1990, ch. 491, § 11; Laws, 1995, ch. 360, § 11; reenacted without change, Laws, 1998, ch. 350, § 11; Laws, 2008, ch. 562, § 5, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 11.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 5.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Exemption of commission, in certain instances, from requirements of confidentiality, see § 25-4-23.

JUDICIAL DECISIONS

1. Construction with other sections.

In the context of standing, while any person may file a complaint with the Mississippi Ethics Commission under Mississippi law, only local district attorneys, the Mississippi Attorney General, or the Commission itself may file direct actions in court challenging the ethical conduct of public officials. As a result, where the parents sought reversal of the confirmations of two school board members by the city council, alleging that certain council members were required to have recused themselves due to conflicts of interest, the parents were not "persons aggrieved" for purposes of Miss. Code Ann. § 11-51-75, and they did not meet the statutory requirements to file a bill of exceptions under the facts presented; their sole remedy was to file a complaint with the Commission. City of Jackson v. Greene, 869 So. 2d 1020, 2004 Miss. LEXIS 337 (Miss. 2004).

§ 25-4-21. Proceedings upon complaints.

(1) Upon receipt of a complaint that complies with Section 25-4-19, the commission shall authorize a confidential investigation of the complaint. Upon completion of the investigation, the commission shall proceed as follows:

(a) If the complaint concerns a public official in the legislative branch, the commission shall refer the complaint, confidentially, to the public official and to the appropriate committee of the House of Representatives or the Senate having jurisdiction over the ethical conduct of its members and employees.

(b) If the complaint concerns a public official in the judicial branch, the commission shall refer the complaint, confidentially, to the public official and to the Commission on Judicial Performance or the Chief Justice of the Supreme Court.

(c) If the complaint concerns a public official in the executive branch or persons not covered in paragraph (a) or (b) of this subsection, then the commission shall refer the complaint, confidentially, to the public official and to the head of the department or agency, if the person is in the executive branch, or, for other public officials, to the person about whom the complaint is filed.

(d) The persons, committees or commission receiving complaints referred in paragraph (a), (b) or (c) shall have thirty (30) days within which to respond to the complaint.

(e) After receiving the response to the complaint or, if no response is received after thirty (30) days from the notice of referral, the commission may, in its discretion, terminate the matter or proceed with an investigation as follows:

(i) The commission may terminate any and all proceedings at any stage of its procedure upon a determination that an appropriate disposition of the matter has occurred.

(ii) If the investigation indicates probable cause for belief that a violation of law has occurred, the commission may set a hearing of the matter to be held in accordance with the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence. After the hearing, the commission may order penalties as prescribed in this chapter. The commission may enroll its order as a civil judgment with the circuit clerk in the county of residence of the judgment debtor. The commission may enforce the judgment on behalf of the State General Fund in the same manner as prescribed for other civil judgments, after complying with subsection (2) of this section.

(iii) The commission may refer the complaint with any evidence gathered during the investigation to the Attorney General and to the district attorney having jurisdiction, with a recommendation that it be considered for presentation to the grand jury. The Attorney General and the district attorney shall report back to the commission within ninety (90) days as to what action was taken following receipt of the complaint and recommendations of the commission, including the intent of the Attorney General to seek further civil remedies and the intent of the district attorney to present such matter to the grand jury.

(2) Any person aggrieved by a decision of the commission made pursuant to its hearing procedures may appeal de novo to the Circuit Court for Hinds County and execution of the commission's decision shall be stayed upon the filing of a notice of appeal.

(3) Civil actions taken by the commission shall not bar prosecutions for violations of the criminal law.

HISTORY:

Laws, 1979, ch. 508, § 6; reenacted, Laws, 1982, ch. 488, § 12; Laws, 1983, ch. 499, § 24; reenacted, Laws, 1986, ch. 348, § 12; Laws, 1988, ch. 546; Laws, 1995, ch. 360, § 12; reenacted without change, Laws, 1998, ch. 350, § 12; Laws, 2008, ch. 562, § 6, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 12.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 6.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (1)(c) was corrected by substituting "...covered in paragraph (a) or (b) of this subsection (1)..." for "...covered in paragraph (a) or (b) of this section..."

Cross References —

Powers of commission, generally, see § 25-4-19.

Exemption of commission, in certain instances, from requirements of confidentiality, see § 25-4-23.

RESEARCH REFERENCES

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 25-4-23. Confidentiality of proceedings and records.

All commission proceedings and records relating to any investigation shall be kept confidential, except this requirement shall not be construed to interfere with the commission's authority, pursuant to paragraph (g) of Section 25-4-17, paragraphs (d) and (f) of Section 25-4-19, and pursuant to Section 25-4-21, or when necessary for prosecutions of violations under Section 25-4-31.

HISTORY:

Laws, 1979, ch. 508, § 7; reenacted, Laws, 1982, ch. 488, § 13; reenacted, Laws, 1986, ch. 348, § 13; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 13; reenacted and amended, Laws, 1998, ch. 350, § 13, eff from and after June 8, 1998 (date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the reenactment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 13.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Penalty for violating confidentiality of commission's proceedings, see § 25-4-31(1).

JUDICIAL DECISIONS

1. In general.

Statute providing that proceedings and records of state Ethics Commission were to be kept confidential, would not authorize Commission to disobey properly ordered subpoena from state Supreme Court, issued at behest of Committee on Professional Responsibility; Commission is a statutory commission subordinate to Supreme Court and its agencies. Mississippi Ethics Comm'n v. Committee on Professional Responsibility of the Miss. Bar, 672 So. 2d 1222, 1996 Miss. LEXIS 145 (Miss. 1996).

Privilege of confidentiality protecting state Ethics Commission's investigations extends to material in public domain, even if information has been publicly disclosed. Mississippi Ethics Comm'n v. Committee on Professional Responsibility of the Miss. Bar, 672 So. 2d 1222, 1996 Miss. LEXIS 145 (Miss. 1996).

§ 25-4-25. Persons required to file statement of economic interest.

Each of the following individuals shall file a statement of economic interest with the commission in accordance with the provisions of this chapter:

(a) Persons elected by popular vote, excluding United States Senators and United States Representatives, to any office, whether it be legislative, executive or judicial, and whether it be statewide, district, county, municipal or any other political subdivision, with the exception of members of boards of levee commissioners and election commissioners;

(b) Members of local school boards that administer public funds, regardless of whether such members are elected or appointed;

(c) Persons who are candidates for public office or who are appointed to fill a vacancy in an office who, if elected, would be required to file under paragraph (a) of this section;

(d) Executive directors or heads of state agencies, by whatever name they are designated, who are paid in part or in whole, directly or indirectly, from funds appropriated or authorized to be expended by the Legislature, and the presidents and trustees of all state-supported colleges, universities and junior colleges;

(e) Members of any state board, commission or agency, including the

Mississippi Ethics Commission, charged with the administration or expenditure of public funds, with the exception of advisory boards or commissions; provided, however, in order to fulfill the legislative purposes of this chapter, the commission may require, upon a majority vote, the filing of a statement of economic interest by members of an advisory board or commission;

(f) Executive directors, heads, or members of any board, committee, commission or council of any of the following entities, by whatever name designated:

(i) An economic development district established pursuant to Title 19, Chapter 5, Mississippi Code of 1972;

(ii) Any entity created pursuant to the Regional Economic Development Act, Title 57, Chapter 64, Mississippi Code of 1972;

(iii) Any county development commission established pursuant to Title 59, Chapter 9, Mississippi Code of 1972;

(iv) Any industrial council established pursuant to Title 57, Chapter 32, Mississippi Code of 1972; or

(v) An airport authority established pursuant to statute or other legislative act.

HISTORY:

Laws, 1979, ch. 508, § 8; reenacted and amended, Laws, 1982, ch. 488, § 14; reenacted, Laws, 1986, ch. 348, § 14; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 14; reenacted without change, Laws, 1998, ch. 350, § 14; Laws, 2008, ch. 562, § 7, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 14.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 7.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Duty of commission to issue advisory opinions upon written request, see § 25-4-17.

Contents of statement of economic interest, see § 25-4-27.

Time for filing of statement, see § 25-4-29.

Penalty for willful filing of false statement, see § 25-4-31(2).

Penalty for willful failure to file statement, see § 25-4-31(3).

§ 25-4-27. Contents of statement of economic interest.

Each person specified under Section 25-4-25 shall file a statement in accordance with the provisions of this chapter in the manner and format prescribed by the commission which shall be certified as to the accuracy and completeness of the information set forth to the best knowledge of the person submitting the statement. The commission shall develop a system of electronic filing for use by persons required to file a statement of economic interest. The commission shall implement the electronic filing system on or before January 1, 2010. Any person required to file with the commission shall file electronically on and after January 1, 2010. The statement shall include the following information for the preceding calendar year:

(a) The name and mailing address of the filer;

(b) The title, position and offices whereby the person is required to file;

(c) All other occupations of the filer and his household members;

(d) The names and addresses of all businesses in which the filer or a household member held a position, and the name of the position, if the person or a household member:

(i) Receives more than Two Thousand Five Hundred Dollars ($2,500.00) per year in income from the business;

(ii) Owns ten percent (10%) or more of the fair market value in the business;

(iii) Owns an ownership interest in the business, the fair market value of which exceeds Five Thousand Dollars ($5,000.00); or

(iv) Is an employee, director or officer of the business;

(e) Any representation or intervention for compensation by a person specified under Section 25-4-25(a) and (d) for any person or business before any authority of state or local government, excluding the courts; provided, however, that this provision shall not apply where the representation involves only uncontested or routine matters. The statement shall identify the person represented and the nature of the business involved; and

(f) The filing party shall list all public bodies from which he or a household member received compensation in excess of One Thousand Dollars ($1,000.00).

HISTORY:

Laws, 1979, ch. 508, § 9; reenacted and amended, Laws, 1982, ch. 488, § 15; Laws, 1984, ch. 488, § 170; reenacted, Laws, 1986, ch. 348, § 15; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 15; reenacted without change, Laws, 1998, ch. 350, § 15; Laws, 2008, ch. 562, § 8, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 15.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 8.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, effective from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Duty of commission to issue advisory opinions upon written request, see § 25-4-17.

Penalty for willful filing of false statement, see § 25-4-31(2).

Penalty for willful failure to file statement, see § 25-4-31(3).

§ 25-4-28. Disclosure of holdings of certain blind trusts not required under certain circumstances.

(1) A public official or public employee who has an interest in a blind trust which meets the standards set forth in this section is not required to disclose the holdings of the blind trust, if those holdings are acquired by the trustee after the trust complies with subsection (2).

(2) A blind trust shall comply with the following conditions:

(a) The trustee of a blind trust shall be:

(i) A bank, trust or brokerage company authorized to exercise fiduciary powers, an individual who is an employee of any such bank, trust or brokerage company, a law firm or an attorney;

(ii) A disinterested party other than the public official or employee's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, first cousin, or the spouse of any such person;

(iii) Someone who is not a public official or public employee; and

(iv) Someone who has not been appointed to a public entity by the public official or public employee, or by a public official or public employee supervised by the filer.

(b) The trustee shall be given complete discretion to manage the trust, including, but not limited to, the power to dispose of and acquire trust holdings without consulting or notifying the filer.

(c) The trustee is prohibited from disclosing to the filer any information concerning the replacement holdings except for information required under this subsection or the minimum tax information which lists only the totals of taxable items from the trust and does not describe the source of individual items of income.

(d) A copy of the trust agreement shall be filed with the commission within five (5) business days after execution, including an identification of the holdings placed in trust, a statement detailing the date of its creation, and the name and address of the trustee.

(e) The trustee annually shall file with the commission a signed statement, under penalty of perjury, stating that he or she has not revealed any information to the filer other than as permitted under this section and that, to the best of the trustee's knowledge, the trust is in compliance with this section.

(f) The trustee and the public official or public employee shall not communicate about the blind trust, directly or indirectly, except in writing, and a copy of all such written communications shall be transmitted to the commission.

(g) The blind trust may be revocable or irrevocable. If the trust is revoked during the period of the public official's or public employee's tenure in office, then the public official or public employee, within ten (10) business days, shall file a statement in accordance with Section 25-4-25 disclosing all of the assets of the trust at the time of its revocation.

(h) A public official or public employee who had a blind trust prior to August 5, 2008, shall amend the terms of such trust if any of its terms fail to comply with this section. A public official or public employee who had a preexisting blind trust shall also comply with the disclosure requirements of paragraph (d). Nothing in this section shall be construed to require the disclosure of assets held in a preexisting blind trust except for the assets placed into the trust at the time of its creation.

HISTORY:

Laws, 2008, ch. 562, § 9, August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 9.

§ 25-4-29. Filing dates for statements.

(1) Required statements hereunder shall be filed as follows:

(a) Every incumbent public official required by paragraphs (a), (b), (d) and (e) of Section 25-4-25 to file a statement of economic interest shall file such statement with the commission on or before May 1 of each year that such official holds office, regardless of duration;

(b) Candidates for office required to file a statement hereunder shall file such statement within fifteen (15) days after the deadline for qualification for that public office;

(c) Persons who are required to file a statement because of appointment to fill a vacancy in an office or required to file under Section 25-4-25(d) and (e) shall file such statement within thirty (30) days of their appointment;

(d) No person by reason of successful candidacy or assuming additional offices shall be required to file more than one (1) statement of economic interest in any calendar year, except such official shall notify the commission as soon as practicable of additional offices not previously reported; and

(e) The commission may, on an individual case basis, provide for additional time to file a statement upon a showing that compliance with a filing date set out under paragraph (a), (b), (c) or (d) above would work an unreasonable hardship.

(2) Any person who fails to file a statement of economic interest within thirty (30) days of the date the statement is due shall be deemed delinquent by the commission. The commission shall give written notice of the delinquency to the person by United States mail or by personal service of process. If within fifteen (15) days of receiving written notice of delinquency the delinquent filer has not filed the statement of economic interest, a fine of Fifty Dollars ($50.00) per day, not to exceed a total fine of One Thousand Dollars ($1,000.00), shall be assessed against the delinquent filer for each day thereafter in which the statement of economic interest is not properly filed. The commission shall enroll such assessment as a civil judgment with the circuit clerk in the delinquent filer's county of residence. The commission may enforce the judgment for the benefit of the State General Fund for the support of the Mississippi Adequate Education Program in the same manner as is prescribed for other civil judgments.

HISTORY:

Laws, 1979, ch. 508, § 10; reenacted and amended, Laws, 1982, ch. 488, § 16; reenacted, Laws, 1986, ch. 348, § 16; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 16; reenacted without change, Laws, 1998, ch. 350, § 16; Laws, 2008, ch. 562, § 10; Laws, 2011, ch. 488, § 1, eff from and after July 1, 2011.

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 16.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 10.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, eff from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (1)(a) was corrected by substituting "...paragraphs (a), (b), (c) and (e) of Section 25-4-25..." for "...items (a), (b), (c) and (e) of Section 25-4-25..."

Cross References —

Mississippi Adequate Education Program, see §§ 37-151-1 et seq.

§ 25-4-31. Fines and penalties.

(1) Any person who violates the confidentiality of a commission proceeding pursuant to this chapter is guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than one (1) year, or be both fined and imprisoned.

(2) Any person who willfully and knowingly files a false complaint with the commission or who willfully affirms, reports or swears falsely in regard to any material matter before a commission proceeding is guilty of a felony, and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or committed to the custody of the Department of Corrections for not more than five (5) years, or by both such fine and imprisonment.

(3) Any person who, having been served with written notice of delinquency, shall fail to file a disclosure statement as required by this chapter within one (1) year of the date the statement is due, or who shall, although filing such statement, knowingly fail to disclose information required by this chapter, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars ($10,000.00).

HISTORY:

Laws, 1979, ch. 508, §§ 11, 12; reenacted, Laws, 1982, ch. 488, § 17; reenacted, Laws, 1986, ch. 348, § 17; reenacted, Laws, 1990, ch. 491; Laws, 1995, ch. 360, § 17; reenacted without change, Laws, 1998, ch. 350, § 17; Laws, 2008, ch. 562, § 11, effective August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

The United States Attorney General, by letter dated August 25, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 360, § 17.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 11.

Laws of 1995, ch. 360, § 20, provided for the repeal of this section effective from and after December 31, 1998. Subsequently, Laws of 1998, ch. 350, § 18, eff from and after the date it is effectuated under the Voting Rights Act of 1965, amended Laws of 1995, ch. 360, § 20, so as to delete the repealer provision.

Cross References —

Confidentiality of commission proceedings, see § 25-4-23.

Persons required to file a statement of economic interest, see § 25-4-25.

Contents of statement of economic interest, see § 25-4-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

ARTICLE 3.

CONFLICT OF INTEREST; IMPROPER USE OF OFFICE.

Sec.
25-4-101. Declaration of public policy.
25-4-103. Definitions.
25-4-105. Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable; penalties.
25-4-107. Complaints; where brought; removal; initiated by; defendant's right to jury trial.
25-4-109. Penalties; elected and nonelected public servants.
25-4-111. Authority head to take action against public servant who has violated article; conditions imposed upon former public servant.
25-4-113. Civil action for damages against violator of article; forfeiture of pecuniary benefit; costs and attorneys' fees.
25-4-115. Civil liability not precluded.
25-4-117. Criminal liability not precluded.
25-4-119. Officials not to derive pecuniary benefits as result of official duties; penalties.
25-4-121. Officials or members of immediate family, partners or associates not to derive pecuniary benefits as result of official duties under Chapter 497, Laws of 2009; penalties.

§ 25-4-101. Declaration of public policy.

The Legislature declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.

HISTORY:

Laws, 1983, ch. 469, § 1, eff from and after July 1, 1983.

Cross References —

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Public officials not to derive income from issuance of bonds by Mississippi Home Corporation, see § 43-33-763.

JUDICIAL DECISIONS

1. In general.

Step-son of asphalt company owner, who was also a governmental board member, bid on public construction project, and the step-son was awarded the project; the Mississippi Ethics Commission erred in determining that step-son was a relative because Miss. Code Ann. § 25-4-103(q) was plain, clear, and unambiguous, and "step-son" was not included in the statutory definition of relative. Miss. Ethics Comm'n v. Grisham, 957 So. 2d 997, 2007 Miss. LEXIS 328 (Miss. 2007).

A public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he or she is associated is not considered a "member" of that entity as the term is applied in §§ 25-4-101 et seq of the Ethics in Government laws. Moore ex rel. Chickasaw County v. McCullough, 633 So. 2d 421, 1993 Miss. LEXIS 505 (Miss. 1993).

ETHICS OPINIONS

It is against the public policy set forth in § 25-4-101 for a state agency's district officer to serve simultaneously as the president of a board of directors of a facility that is under his and his staff's jurisdiction regarding issuance of a certain permit that the facility is required to have in order to operate. Op. of Miss. Ethics Comm. Op. No. 97-051-E.

An alderman who is also a member of a community college's faculty should recuse himself from any matter coming before the municipal governing authority that involves his community college employer in order to avoid an appearance of impropriety and to avoid using his official position to obtain a pecuniary benefit for himself. Op. of Miss. Ethics Comm. Op. No. 97-144-E.

A municipal council member, who is an employee of the municipal school district, is always advised to totally and completely recuse himself or herself from matters involving the appointment of municipal school board members in order to comply with the public policy set forth in § 25-4-101 and to avoid a potential violation of § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 98-013-E.

A municipal council member, who is an employee of the municipal separate school district, must always totally and completely recuse himself or herself from matters involving the appointment of members to the municipal separate school board of trustees in order to comply with the public policy set forth in this section and to avoid a potential violation of § 25-4-105 (1). Op. of Miss. Ethics Comm. Op. No. 98-023-E.

An attorney who is serving as counsel to the city's port commission may not simultaneously be employed by casino developers that are seeking casino site approval from the city port commission. Op. of Miss. Ethics Comm. Op. No. 98-064-E.

It is not a violation of the state conflict of interest laws for a housing authority employee/manager to employ in his or her private business a resident of the housing authority site he or she manages. Op. of Miss. Ethics Comm. Op. No. 98-074-E.

An alderman's participation in discussions and/or action with regard to a water and sewer extension to undeveloped real property belonging to the firm's owners, when the alderman in question is employed by the firm, has the potential of creating suspicion among the public and reflecting unfavorably upon the city; and, therefore, the alderman should recuse himself. Op. of Miss. Ethics Comm. Op. No. 98-088-E.

A state commission may not temporarily hire an attorney to serve as its staff attorney and to represent it in court or before other state or federal agencies when other members of the attorney's law firm will represent clients before the state commission, even if the attorney has no duties in regard to the proceedings in which his law firm is participating before the state commission. Op. of Miss. Ethics Comm. Op. No. 98-095-E.

The city's contracting with a construction company when it is owned by an individual who is also the employer of an alderman has the potential of creating suspicion among the public and reflecting unfavorably upon the city; therefore, the city should not authorize the contract with the construction company in order to comply with the public policy underlying this section. Op. of Miss. Ethics Comm. Op. No. 98-100-E.

A state employee may coauthor publications that pertain to subjects in the state employee's area of expertise where the publications' topics are unrelated to the current research with the state agency, the work on the publications will be performed during personal time and will not involve the use of the state agency's facilities, equipment, research and/or personnel, the employee will receive no pecuniary benefit for the work on the publications, and the employee's coauthoring the publications will comply with all of the state agency's policies and procedures. Op. of Miss. Ethics Comm. Op. No. 99-040-E.

A municipal police officer may be a private process server during his off-duty hours, but may not act as a private process server in any cause of action before the Municipal Court of the municipality employing him as a police officer. Op. of Miss. Ethics Comm. Op. No. 99-041-E.

The state conflict of interest laws do not prohibit an executive director of a state agency from attending night and/or weekend real estate classes in an effort to obtain a realtor's license, from entering into consulting contracts with firms, institutions, associations, organizations and individuals, or from working in the real estate business; however, the executive director should absolutely avoid contracts with private entities to do consultant and/or real estate work when those private entities are directly or indirectly involved with the state agency or are subject to the state agency's authority since such would create suspicion among the public and reflect unfavorably upon the state and the state agency. Op. of Miss. Ethics Comm. Op. No. 99-042-E.

A state legislator's company may not continue to manage an office building owned by a state corporation that is established by state law as a governmental instrumentality when the state legislator's company managed the building prior to the state legislator's election. Op. of Miss. Ethics Comm. Op. No. 99-072-E.

The statute precludes a bail bonding company owned by a constable's spouse or a bail bonding company owned by a police officer's spouse from writing bail bonds for the release of defendants confined in the county or city jails respectively as such actions are contrary to public policy and a breach of the public trust. Op. of Miss. Ethics. Comm. Op. No. 99-092-E.

Although a city council member may be employed at a casino located in the council member's city and owned by a gaming corporation that has no contracts, rental agreements or otherwise, with the city under § 24-5-105, such employment is prohibited by this section as contrary to public policy and conflicting with the public trust obligations required of a council member. Op. of Miss. Ethics Comm. Op. No. 99-095-E.

A bail bonding company using a soliciting agent to write bail bonds in a county in which its soliciting agent's spouse is a county constable or a bail bonding company using a soliciting agent to write bail bonds in a city in which its soliciting agent's spouse is a city police officer constitute circumstances with the potential to create suspicion among the public and reflect unfavorably upon the county or city and, therefore, the county and/or city law enforcement entities must establish rules and procedures to prevent the constable/police officer from violating the conflict of interest laws; without the establishment of such rules and procedures, the use by a bail bonding company of a soliciting agent to write bail bonds for the release of defendants confined in the jail of a law enforcement entity in which the soliciting agent's spouse serves as a law enforcement officer is contrary to public policy and should be avoided. Op. of Miss. Ethics. Comm. Op. No. 99-106-E.

A board member of a county port authority is prohibited from entering into a memorandum of understanding with the county port authority as a property owner agreeing to acquire county port authority water and sewer services which may become available through a proposed water and sewer extension and a port authority entering into such a memorandum of understanding has the potential to create suspicion among the public and this would reflect unfavorably upon the port authority. Op. of Miss. Ethics. Comm. Op. No. 99-110-E.

A school district may not sell property to a rural water association when the president of the school board is also the president of the rural water association as such a sale could be expected to create public suspicion and reflect unfavorably on the school district. Op. of Miss. Ethics. Comm. Op. No. 99-111-E.

Although it is not as such a violation of the conflict of interest laws for a town to purchase land from the mayor's father-in-law at its appraised value when the land has been designated essential for water facility expansion, the mayor should totally and completely recuse himself from all matters concerning the town's purchase of the mayor's father-in-law's land in order to comply with public policy and prevent any appearance of impropriety. Op. of Miss. Ethics. Comm. Op. No. 99-113-E.

Although it is not as such a violation of the state conflict of interest laws for a legislator to be employed by a casino or for a legislator's father to carry a key gaming license from a casino, the legislator would be required to totally and completely recuse himself from any action that concerned the gaming industry. Op. of Miss. Ethics. Comm. Op. No. 99-114-E.

The state's public policy on elective and public office as public trusts is sufficient to prohibit an individual from simultaneously serving as chancery clerk and as trustee of a community college. Op. of Miss. Ethics. Comm. Op. No. 99-116E.

Members of a state board should totally and completely recuse themselves from matters coming before the state board that have even the appearance of perpetuating specific advantages or disadvantages that could benefit facilities with which the board members are associated. Op. of Miss. Ethics. Comm. Op. No. 99-121-E.

The state's public policy on public service as a public trust prohibited the trustees of a community hospital from serving on and appointing themselves to serve on the board of directors of a nonprofit corporation which sought to lease the community hospital from the county board of supervisors. Op. of Miss. Ethics. Comm. Op. No. 99-123-E.

The appointment of a planning and development district employee to a community college board of trustees had the potential to create public suspicion and reflect unfavorably on the planning and development district and the community college by preventing the community college from having access to the services and expertise available throughout the planning and development district. Op. of Miss. Ethics. Comm. Op. No. 99-124-E.

The employment of an alderman by the tax assessor/collector's office within the county in which the alderman's municipality was located had the potential to create public suspicion and reflect unfavorably on the county tax assessor/collector's office and the municipality as this circumstance removed from the municipality the option to enter into an interlocal agreement with the county and benefit from the services that the county tax assessor/collector's office can provide the municipality. Op. of Miss. Ethics. Comm. Op. No. 99-125-E.

Although a company could maintain an existing sixteenth section land lease, even though the principal owner of the company had been elected to serve on the county board of supervisors, the owner/board member would be required to recuse himself from any matter concerning sixteenth section land leases once he was sworn into office. Op. of Miss. Ethics. Comm. Op. No. 99-126-E.

The service of a community hospital's president on the board of directors of the community hospital's depository has the potential to create public suspicion and reflect unfavorably upon the community hospital and, therefore, the community hospital's president should not accept the position on the bank's board of directors in compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 99-129-E.

A senior planner for a regional planning commission that served as the metropolitan planning commission for the region within which a city was located could not simultaneously serve on the city's planning commission as to do otherwise would not comply fully with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 99-130-E.

The appointment of a county supervisor's spouse to a county planning commission when the planning commission's administrative decisions are appealable to the board of supervisors constitutes a circumstance that can be expected to create public suspicion and reflect unfavorably upon the county and the planning commission and, therefore, in order to comply fully with the mandate set forth in the statute, the board of supervisors should avoid appointing a supervisor's spouse to the planning commission. Op. of Miss. Ethics. Comm. Op. No. 00-001-E.

An individual serving as a member of a board of levee commissioners who also was an officer and part owner of a corporation holding a long-term lease with the board of levee commissioners constituted a circumstance that had the potential to create public suspicion and reflect unfavorably on the board of levee commissioners and the individual could not continue to seek election to the board of levee commissioners if his corporation intended to maintain its lease with the board of levee commissioners; to do otherwise would be contrary to the state's public policy set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-003-E.

A board attorney for a school district who is also serving on the board of directors of the school district's depository is in a situation that creaes a potential for creating public suspicion and reflects unfavorably upon the school district and, therefore, such a circumstance should be avoided in order to comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-005-E.

A district attorney using his own personal law office for district attorney office duties and paying the utilities and/or ad valorem taxes of the office out of the district attorney's bad check unit funds is in a circumstance that has the potential to create public suspicion and reflect unfavorably on the district attorney's office and, therefore, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-006-E.

Service by a state department employee as a corporate officer or member of the board of directors of a nonprofit corporation whose purpose is to promote cooperation between public and private entities regarding the area of responsibility under the jurisdiction of the state department is clearly a circumstance that has the potential to create public suspicion and reflect unfavorably upon the state department and, therefore, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-007-E.

A state university employee's travel agency making travel arrangements for state university employees, to be paid for by the state university with public funds, is a circumstance that has the potential to create public suspicion and reflect unfavorably upon the district attorney's office and, therefore, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-008-E.

A former legislator contracting under any circumstances with a state university within one year of the end of the former legislator's term of office is a circumstance that can be expected to create public suspicion and reflect unfavorably on the state university and the legislature and should be avoided in order for the university and the former legislator to fully comply with the public policy and public trust mandates set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-010-E.

For a Department of Education employee, including a school attendance officer, to be employed and/or compensated by a public school district has the potential to create public suspicion and reflect unfavorably on the Department of Education and the public school district and this circumstance should be avoided. Op. of Miss. Ethics. Comm. Op. No. 00-011-E.

The public policy set forth in the statute is sufficient to preclude a former county supervisor from being compensated by a planning and development district to perform services for a solid waste authority when he had formerly served as a planning and development district board member and served as a member of the county board of supervisors which had entered into a 20-year contract with the solid waste authority to provide the county landfill operation services. Op. of Miss. Ethics. Comm. Op. No. 00-013-E.

The contracting of a county supervisor with Keep America Beautiful, Inc. to assist it with implementing its programs when Keep America Beautiful, Inc. is given the discretion to fund local entities, including counties, to implement local litter prevention projects results in a circumstance that can be expected to create public suspicion and reflect unfavorably upon the county and this circumstance should be avoided in order for the county to fully comply with the state's public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-017-E.

A newly elected supervisor's spouse is prohibited from continuing her employment, or from contracting in any other way with a county-owned hospital after the county board of supervisors of which the supervisor is a member approves the first budget submitted by the county-owned hospital, and a recusal or abstention by the supervisor will not alter the result. Op. of Miss. Ethics. Comm. Op. No. 00-019-E.

The employment of an alderman's stepchild by the city has the potential to create public suspicion and reflect unfavorably upon the city. Op. of Miss. Ethics. Comm. Op. No. 00-021-E.

The employment of a supervisor's child by the county has the potential to create public suspicion and reflect unfavorably on the county and, such a circumstance should be avoided when possible; the supervisor must totally and completely recuse himself from all discussions, actions, and decisions concerning his child's employment contract with the county when such circumstances cannot be avoided. Op. of Miss. Ethics. Comm. Op. No. 00-033-E.

An independent contractor with a levee district who is directly or indirectly involved with matters concerning the levee district that are before a joint water management district of which he is a board member has the potential to create public suspicion and reflect unfavorably on both governmental entities and, therefore, such a board member should completely recuse himself from any matter coming before the joint water management district board that concerns a levee district with which the board member is a current independent contractor. Op. of Miss. Ethics. Comm. Op. No. 00-035-E.

Although a waterway district was not prohibited from contracting with a county supervisor's corporation in the event that the waterway district's board determined that the county supervisor's corporation's was the lowest and best bid for the construction of the 20 cabins, since the state bond issue and its monies to fund the contract to build the 20 cabins were independent and separate from the waterway district's normal indebtedness/liabilities, contracts, and county funding, the county supervisor would be required to recuse himself from any matter coming before the board of supervisors that concerned the waterway district, any appointment to the waterway district board, and/or the county's funding of the waterway district during the existence of the construction contract should the waterway district board award the contract to the supervisor's corporation. Op. of Miss. Ethics. Comm. Op. No. 00-037-E.

The state conflict of interest laws will not require an individual to resign as the city's street superintendent should he or she qualify as a candidate for the office of mayor of the city; however, the individual would not be permitted to campaign, directly or indirectly, during the hours he was being compensated by the city as its street commissioner and would not be permitted to use his employment position with the city, the city's equipment, or any other city resources to benefit his campaign for mayor. Op. of Miss. Ethics. Comm. Op. No. 00-038-E.

The executive director of a nonprofit corporation having as its primary purpose the provision of local human services, and who also serves on a county human resource agency's board, because the nonprofit corporation is expected to seek funding or other support from the county human resource agency and enter contractual arrangements with this agency, is in a circumstance having the potential to create public suspicion and reflect unfavorably on the county human resource agency; such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-040-E.

The employment of a county supervisor's spouse by the county-owned hospital is a circumstance that has the potential to create public suspicion and reflect unfavorably on the county and the county-owned hospital, especially with regard to the board of supervisors' authority to approve the county-owned hospital's budget, to fund or not to fund the county-owned hospital by means of a tax levy, and to determine whether or when to lease or sell the county-owned hospital, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-042-E.

A law firm where one of the partners is a legislator cannot be employed and compensated by a private foundation that is funded by community/junior college foundations with undesignated, nonpublic funds. Op. of Miss. Ethics. Comm. Op. No. 00-044-E.

A legislator's participation in legislative matters concerning community/junior colleges when the legislator is a partner in a law firm whose attorney is being paid by a private foundation to pursue litigation on behalf of the community/junior college's interests has the potential to create public suspicion and reflect unfavorably upon the legislature and the community college, and the legislator must totally and complete recuse himself from any matters before the legislature or its committees that concern community/junior colleges should his law firm's attorney be retained by the private foundation. Op. of Miss. Ethics. Comm. Op. No. 00-044-E.

A county supervisor may donate real property to the county for the purpose of establishing a rubbish site within the county; however, the section would be violated should the transfer of the real property from the supervisor to the county not be a true donation or should there be an interest or benefit accruing to the supervisor. Op. of Miss. Ethics. Comm. Op. No. 00-045-E.

A public servant supervising the work of a relative, such as a county road manager supervising his child or a county building and grounds supervisor supervising his spouse, has the potential of creating suspicion among the public and reflecting unfavorably upon the county and, therefore, such a circumstance should be avoided in order for the county and the public servant to fully comply with the state's public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-046-E.

A county employee's direct or indirect involvement with matters concerning his employing county that were before the board of aldermen of which he was also a member had the potential of creating suspicion among the public and reflecting unfavorably upon the city and the county and, therefore, he would be required to totally and completely recuse himself from any matter concerning his county employer coming before the board of aldermen should he be elected to the board of aldermen. Op. of Miss. Ethics. Comm. Op. No. 00-048-E.

A school district's employment of the brother and half-brother of one of its board members has the potential to create public suspicion and reflect unfavorably upon the school district and, therefore, the board member should totally and completely recuse himself from any matter coming before the school board concerning the employment and/or re-employment of his brother or half-brother and decisions concerning their respective compensation and benefits in order to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-053-E.

A district attorney's office contracting with the son of the business administrator of the district attorney's office may create public suspicion and reflect unfavorably upon the school district and, therefore, this circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-054-E.

Where one spouse has supervision and administrative authority over a payroll signed by the other spouse the potential exists for creating public suspicion and reflecting unfavorably upon the county and there is a public trust responsibility that checks and balances be provided to assure that proper oversight and controls exist in the expenditure of the public's monies and; therefore, the county board of supervisors and the emergency management council, with the assistance of the State Department of Audit, need to be certain that the checks and balances in place circumstances in of this type are sufficient to alleviate public suspicion and unfavorable reflections upon the county and the emergency management council. Op. of Miss. Ethics. Comm. Op. No. 00-055-E.

Where one spouse is a facility manager for a fair commission and has supervisory authority and responsibility over the other spouse who is a facility secretary for the commission, a circumstance exists that can be expected to create public suspicion and reflect unfavorably on the fair commission; such a circumstance should be avoided in order for there to be full compliance with the public policy mandate and public trust obligation imposed by the statute. Op. of Miss. Ethics. Comm. Op. No. 00-056-E.

Where a state superintendent of education's spouse is a contractor or subcontractor with public school districts, a circumstance having the potential to create public suspicion and reflect unfavorably upon the state department of education exists and the superintendent is required to totally and completely recuse himself from any matter coming before his department or his board that concerns the spouse's contracts with public school districts and/or an educational consulting group's contracts with public school districts in which the spouse is a subcontractor. Op. of Miss. Ethics. Comm. Op. No. 00-058-E.

Where the duties that an individual performed for a state agency regarding the restructuring of legislation that allowed the issuance of general obligation bonds by the state to support an energy project and the negotiation of a power purchase agreement with the utility provider were not directly related to the industrial complex, the individual, upon retiring from the state agency, would not be prohibited from being compensated by a consulting engineering firm as its employee in the management and operation of the industrial complex and in the recruitment of tenants for the industrial complex. Op. of Miss. Ethics. Comm. Op. No. 00-061-E.

A former state employee accepting employment with a consulting engineering firm is in a situation that has the potential to create public suspicion and reflect unfavorably upon the state agency where this former state employee had the same specified duties and responsibilities. Op. of Miss. Ethics. Comm. Op. No. 00-061-E.

A former state employee accepting employment with a consulting engineering firm has the potential of creating suspicion among the public and reflecting unfavorably upon the state agency and, therefore, the former state employee and his future consulting engineering firm employer would be required to remain keenly aware of the public policy mandate set forth in the statute in determining his future duties. Op. of Miss. Ethics. Comm. Op. No. 00-063-E.

An individual serving simultaneously as a county supervisor and a state employee has the potential of creating suspicion among the public and reflecting unfavorably upon the state agency and the county, should the individual become involved, either directly or indirectly, with his county board of supervisors by way of his duties and responsibilities as a state employee or become involved, directly or indirectly, with his state agency by way of his duties and responsibilities as a county supervisor and, therefore, the individual as a county supervisor must totally and completely recuse himself from any matter coming before his board of supervisors that concerns his state agency employer or the individual as a state employee must totally and completely recuse himself from any programs or services of his state agency employer that concern the county he serves as a supervisor. Op. of Miss. Ethics. Comm. Op. No. 00-068-E.

The public policy mandate set forth in the statute precludes a city council member from writing bail bonds for the release of a defendant held in the custody of the law enforcement entity of the city he or she is elected to serve. Op. of Miss. Ethics. Comm. Op. No. 00-067-E.

A former district attorney serving as a criminal defense counsel on a case that was reviewed in his office by his assistant district attorneys prior to the end of his term has the potential of creating suspicion among the public and reflecting unfavorably upon the district attorney's office and, therefore the mandate set forth in the statute precludes a former district attorney from serving as a criminal defense counsel on a case that was reviewed in his office by his assistant district attorneys prior to the end of his term. Op. of Miss. Ethics. Comm. Op. No. 00-069-E.

An employee of the county sheriff's department serving as an E-911 commissioner when the E-911 commission and the county sheriff's department have a contractual agreement for dispatching services has the potential of creating suspicion among the public and reflecting unfavorably upon the county sheriff's department and the E-911 commission and therefore, such a circumstance should be avoided to comply with the public policy mandates set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-074-E.

The state's public policy of public service being a public trust prohibited individual from serving as the director of the Building, Grounds and Real Property Management when his consulting firm's contract with the state university to provide an Americans with Disability Act Compliance Implementation Plan remained in effect. Op. of Miss. Ethics. Comm. Op. No. 00-076-E.

The employment of an alderman's son-in-law by the city has the potential of creating suspicion among the public and reflecting unfavorably upon the city and, therefore, such circumstances should be avoided when possible; further, the alderman must totally and completely recuse himself from all discussions, actions, and decisions concerning his son-in-law's employment contract with the city when such circumstances cannot be avoided. Op. of Miss. Ethics. Comm. Op. No. 00-077-E.

A nonemergency transportation company contracting with a state agency can operate within a region under the supervision of a coordinator with the state agency where the coordinator has direct involvement as to which nonemergency transportation company in his region will be utilized for transports and where the company is owned by the coordinator's father and formally employed the coordinator's spouse; however, the coordinator would be required to totally and completely recuse himself from any decision to utilize the transportation company. Op. of Miss. Ethics. Comm. Op. No. 00-079-E.

An alderman who is an attorney having a contract with the Attorney General's office to do legal research when the city is receiving grant funds and/or expects to pursue grant funds from the Attorney General's office certainly has the potential of creating suspicion among the public and reflecting unfavorably upon the state and city and, therefore, the alderman must totally and completely recuse himself from any matter coming before the city board that involves the Attorney General's office, especially grants from the Attorney General's office. Op. of Miss. Ethics. Comm. Op. No. 00-082-E.

The state public policy set forth in the statute will require a legislator, who is employed by a not-for-profit corporation that receives state legislative appropriated funds that do not result in payments under contracts in which the legislator would be interested, directly or indirectly, to totally and completely recuse himself from all state legislative considerations concerning the entity receiving the state legislative appropriated funds and the state agency program providing the funding to the entity. Op. of Miss. Ethics. Comm. Op. No. 00-086-E.

A legislator participating in matters before the legislature concerning the waste management industry where the legislator was employed in the waste management industry, had the potential of creating suspicion among the public and reflecting unfavorably upon the legislature, and therefore, the state public policy set forth in the state required that the legislator totally and completely recuse himself from any matter coming before the legislature concerning the waste management industry. Op. of Miss. Ethics. Comm. Op. No. 00-088-E.

A city council member being employed by the county in which his city is located has the potential of creating suspicion among the public and reflecting unfavorably upon the county and the city and, therefore, a city council member should totally and completely recuse himself from all matters coming before the city council that concern his county employer. Op. of Miss. Ethics. Comm. Op. No. 00-089-E.

The employment of an E-911 commissioner's daughter-in-law by the commission has the potential of creating suspicion among the public and reflecting unfavorably upon the city and, therefore, such circumstances should be avoided when possible; further, an E-911 commissioner must totally and completely recuse himself from all discussions, actions, and decisions concerning his daughter-in-law's employment contract with the commission when such circumstances cannot be avoided. Op. of Miss. Ethics. Comm. Op. No. 00-092-E.

An executive of a telephone corporation is prohibited from serving on the E-911 commission when the county's E-911 equipment is leased from the telephone corporation employing him. Op. of Miss. Ethics. Comm. Op. No. 00-092-E.

A county employee's direct or indirect involvement with matters concerning his employing county that are before the board of aldermen of which he is also a member has the potential of creating suspicion among the public and reflecting unfavorably upon the city and the county and, therefore, a deputy sheriff must totally and completely recuse himself from any matter concerning his county employer coming before the board of aldermen should he be elected to the board of aldermen. Op. of Miss. Ethics. Comm. Op. No. 00-094-E.

An individual serving as both a city police officer and a part-time deputy sheriff has the potential of creating suspicion among the public and reflecting unfavorably upon both the county and city when the city employing him is located within the county employing him, especially where the county sheriff's department has concurrent jurisdiction with the city police departments to provide law enforcement inside the city limits of the municipalities located within the county, and therefore, such a circumstance should be avoided whenever possible. Op. of Miss. Ethics. Comm. Op. No. 00-096-E.

To fully and completely comply with the public policy mandate set forth in the statute, a company owned by a state employee should not do business with any companies that are expected to do business with the state whereby they will be subject to the employee's authority as the director of a state bureau; an engineering firm with which his company had a subconsultant contract were perfect examples of the state employee's company doing business with another company that should be avoided if the engineering firm was expected to be doing business with the state whereby it would be subject to the state employee's authority as the director of the state bureau. Op. of Miss. Ethics. Comm. Op. No. 00-098-E.

To fully and completely comply with the public policy mandate set forth in the statute, a company owned by a state employee should not do business with any companies that are expected to do business with the state whereby they will be subject to the state employee's authority as the director of the state bureau; two other companies with which his company had a subconsultant role with the city were perfect examples of the the state employee's company doing business with other companies that should be avoided if the other two companies were expected to be doing business with the state whereby they would be subject to the state employee's authority as the director of the state bureau. Op. of Miss. Ethics. Comm. Op. No. 00-099-E.

One individual serving in dual capacities for the county government has the potential of creating suspicion among the public and reflecting unfavorably upon the county government and, therefore, where a deputy chancery clerk simultaneously serves as a part-time E-911 dispatcher for the same county, the clerk should not perform any chancery clerk duties in regard to the E-911 commission's funding, payroll and budget, especially those related to auditing and reporting. Op. of Miss. Ethics. Comm. Op. No. 00-100-E.

An attorney/spouse or others in the attorney/spouse's law firm being compensated to do a closing on a Mississippi Home Corporation (MHC) bond-funded mortgage loan or a MHC second mortgage loan under MHC's down-payment assistance program when the new appointee is a member of the MHC board of directors which authorized the related contracts to the mortgage loan or second mortgage loan is a circumstance that can be expected to create public suspicion and reflect unfavorably upon the MHC and, therefore, to fully comply with the public policy mandate set forth in the statute, the attorney/spouse or others in the attorney/spouse's law firm should not do the closing on an MHC bond-funded mortgage loan or an MHC second mortgage loan under MHC's down-payment assistance program during the new appointee's term as a member of the MHC board of directors. Op. of Miss. Ethics. Comm. Op. No. 00-101-E.

A member of a city council serving as an advisory board member of one of the city's depositories has the potential of creating public suspicion and reflecting unfavorably upon the city and the city council and such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-107-E.

The employment of a sheriff's son at a regional jail facility where he serves as the chief corrections officer is a circumstance that can be expected to create public suspicion and reflect unfavorably upon the counties and the regional jail facility and such a circumstance should be avoided for full compliance with the public policy mandate and public trust obligation imposed by the statute. Op. of Miss. Ethics. Comm. Op. No. 00-108-E.

Although it is not a violation of the state conflict of interest laws for a state employee to develop, patent, and market equipment in the industry that his or her state agency regulates, in order to fully and completely comply with the public policy mandate set forth in the statute, neither the state employee nor the state agency's staff under his direction would be allowed to evaluate or review industry equipment which the state employee developed, patented, and marketed in the industry. Op. of Miss. Ethics. Comm. Op. No. 00-111-E.

An individual serving simultaneously as a city council member in the city where the state port authority is located and as an employee with the state port authority certainly has the potential of creating suspicion among the public and reflecting unfavorably upon the state port authority and the city, should the individual become involved, either directly or indirectly, with his city by way of his duties and responsibilities as a state employee or become involved, directly or indirectly, with his state agency by way of his duties and responsibilities as a city council member and, therefore the individual as a city council member should he be elected must totally and completely recuse himself from any matter coming before the city council that concerns his state agency employer and the individual as a state employee must totally and completely recuse himself from any programs or services of his state agency employer that concerns the city. Op. of Miss. Ethics. Comm. Op. No. 00-112-E.

An employee of the county board of supervisors serving as a member of the county election commission has the potential of creating suspicion among the public and reflecting unfavorably upon the county election commission and, therefore, the assistant road manager, as a county election commissioner, would be required to totally and completely recuse himself from all discussions, actions, and decisions of the county election commission concerning the board of supervisors and/or any member thereof. Op. of Miss. Ethics. Comm. Op. No. 00-113-E.

An employee of the county tax assessor/collector serving as a member of the county election commission has the potential of creating suspicion among the public and reflecting unfavorably upon the county election commission and, therefore, the deputy tax assessor, as a county election commissioner, would be required to totally and completely recuse himself from all discussions, actions, and decisions of the county election commission concerning the county tax assessor/collector. Op. of Miss. Ethics. Comm. Op. No. 00-113-E.

A bail bonding company writing bail bonds in a city when the person writing the bail bonds is a parent or child of an employee of the city police department is certainly in a circumstance having the potential of creating suspicion among the public and reflecting unfavorably upon the city and, therefore, a city must establish rules and regulations that absolutely preclude police department employees' involvement in the bail bond process when those employees are the parents or children of bail bond company employees or agents. Op. of Miss. Ethics. Comm. Op. No. 00-114-E.

A state employee serving as a county school board member is in a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the state agency and the county school district if the state employee does not totally and completely recuse himself from matters concerning his state agency that come before the county school board of trustees. Op. of Miss. Ethics. Comm. Op. No. 00-116E.

A mayor's employment by the city's engineering firm, even without compensation, has the potential of creating suspicion among the public and reflecting unfavorably upon the city. Op. of Miss. Ethics. Comm. Op. No. 00-119-E.

One individual serving in dual capacities for separate authorities of a governmental entity is in a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the governmental entity and, therefore, the governmental entity must review such circumstances of dual employment with the intent of reducing or eliminating the public's suspicion by being able to demonstrate to the public that such dual employment is both financially and functionally beneficial to the public. Op. of Miss. Ethics. Comm. Op. No. 00-123-E.

One individual serving in dual capacities for separate authorities of a governmental entity results in a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the governmental entity and, therefore, the governmental entity must review such circumstances of dual employment with the intent of reducing or eliminating the public's suspicion by being able to demonstrate to the public that such dual employment is both financially and functionally beneficial to the public. Op. of Miss. Ethics. Comm. Op. No. 00-124-E.

A legislator who is employed by a Mississippi nonprofit corporation will be required to totally and completely recuse himself from all state legislative considerations concerning the Mississippi nonprofit corporation and its members. Op. of Miss. Ethics. Comm. Op. No. 00-126-E.

A city council member employed by the county-owned community hospital located within the city the council member serves has the potential of creating suspicion among the public and reflecting unfavorably upon the city and the county-owned community hospital and, therefore, the city council member would be required to totally and completely recuse him or herself from all matters coming before the city council that concern the county-owned community hospital employing the council member. Op. of Miss. Ethics. Comm. Op. No. 00-127-E.

Sale by a school board member of services of any kind through the school district's cafeteria plan to the school district employees who pay for the services through payroll deductions approved by the school board is a circumstance that creates suspicion among the public and reflects unfavorably upon the school district and, therefore, a school board member must refrain from selling services to the school district's employees in such a circumstance to comply with the state public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-130-E.

A municipality must avoid a contract with a church to lease a facility to be paid for with grant funds when an employee in the state agency that administers the grant and under whose general supervision the grant falls is a member of the church and is a member of the church's board of trustees because the state employee's inability to perform his supervisory duties over the municipality's grant because of his church's leasing of a facility to the municipality in relation to the grant is a circumstance that could be expected to create suspicion among the public and reflect unfavorably upon the state agency. Op. of Miss. Ethics. Comm. Op. No. 00-133-E.

The employment of a county supervisor's daughter-in-law by the county tax assessor/collector's office has the potential of creating suspicion among the public and reflecting unfavorably upon the county and, therefore, such a circumstance should be avoided whenever possible in order to fully comply with the state's public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 00-135-E.

An employee of the office of the city clerk serving as a member of the city election commission has the potential of creating suspicion among the public and reflecting unfavorably upon the city election commission and, therefore, the administrative assistant in the office of the city clerk must resign that position before accepting the mayor's appointment as a member of the city election commission. Op. of Miss. Ethics. Comm. Op. No. 00-138-E.

A member of the state public body having broad authority and power over the state's airports should not be associated with an individual airport, even as an advisory board member, as such association could be expected to create suspicion among the public and reflect unfavorably upon the public body in which the member is elected to serve. Op. of Miss. Ethics. Comm. Op. No. 01-001-E.

A public servant, including a school district employee, may perform statutorily prescribed notary public duties and be paid the statutorily allowed fee for such notary public duties rendered to the public servant's employing governmental entity if the employee qualified as a notary public paid his or her own expenses necessary to qualify as a notary public and those expenses were not repaid or reimbursed, either directly or indirectly, by the employing governmental entity. Op. of Miss. Ethics. Comm. Op. No. 01-002-E.

A spouse of an individual who is a newly appointed school board member remaining employed with the school district during the remaining period of the spouse's current employment contract with the school district after the newly appointed school board member has been sworn into office has the potential of creating suspicion among the public and reflecting unfavorably upon the school district and, therefore, a newly appointed school board member must totally and completely recuse himself from any matter coming before the school board concerning his spouse during the remaining period of the spouse's current employment contract with the municipal school district. Op. of Miss. Ethics. Comm. Op. No. 01-006-E.

Where an individual simultaneously served as the county prosecuting attorney and as mayor of a municipality located within the county the individual served as prosecutor, he would be required to totally and completely recuse himself from any matters coming before the town's governing authority that concerned the board of supervisors that appointed him to the position of county prosecuting attorney. Op. of Miss. Ethics. Comm. Op. No. 01-009-E.

An individual would not be prohibited from continuing to serve as mayor should he be employed by the county sheriff's department where there were no contracts existing between the municipality and the county as the municipality and the county were separate governmental entities; however a violation of the section would arise in the event of a contract between the municipality and the county in which the individual, as an employee of the sheriff's department and as the mayor of the city, would have a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 01-010-E.

Although an individual could continue to serve as mayor should he be employed by the county sheriff's department, he would be required to totally and completely recuse himself from all matters coming before the municipality's governing authority that concerned the county. Op. of Miss. Ethics. Comm. Op. No. 01-010-E.

A spouse of an individual who is a newly appointed school board member remaining employed with the school district during the remaining period of the spouse's current employment contract with the school district after the newly appointed school board member has been sworn into office has the potential of creating suspicion among the public and reflecting unfavorably upon the school district and, therefore, the school board member would be required to totally and completely recuse himself from any matter coming before the school board concerning his spouse during the remaining period of the spouse's current employment contract. Op. of Miss. Ethics. Comm. Op. No. 01-011-E.

A city's purchase of a historical property from an estate in which an alderman's child had an interest as an heir had the potential of creating suspicion among the public and reflecting unfavorably upon the city and, therefore, the alderman would be required to totally and completely recuse herself from all discussions, actions, and decisions concerning city's purchase of the historical property from the estate. Op. of Miss. Ethics. Comm. Op. No. 01-013-E.

Although it was not a violation of the state conflict of interest laws for an employee in a supervisory position with a state department to serve on the board of directors of a service organization's nonprofit family center without compensation where the family center had a grant issued by the state department and provided services to clients of the state, the state employee would be required to totally and completely recuse herself from all matters concerning the nonprofit service organization and the service organization's nonprofit family center, especially with regard to current and future grants issued by the state department to the nonprofit service organization and/or the service organization's nonprofit family center and state department clients under her supervision that were receiving services from the family center. Op. of Miss. Ethics. Comm. Op. No. 01-014-E.

An alderman serving as an advisory board member of one of the city's depositories has the potential of creating suspicion among the public and reflecting unfavorably upon the city and the board of aldermen and, therefore, such a circumstance should be avoided to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-023-E.

The public policy mandated set forth in the statute is sufficient to prohibit a body shop owned by justice court judge from repairing vehicles owned by the Mississippi Department of Public Safety and to prohibit the Mississippi Department of Public Safety from having its vehicles repaired at the body shop. Op. of Miss. Ethics. Comm. Op. No. 01-027-E.

A state employee contracting with divisions of the federal government or municipalities that the state employee is directly or indirectly involved with through his state employment has the potential of creating suspicion among the public and reflecting unfavorably upon his state employer and, therefore, a state employee should avoid contracting with any division of the federal government or a municipality that he is directly or indirectly involved with through his state employment in order to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-028-E.

A community hospital contracting with a business owned in whole or in part by one of its employees provides a circumstance having the potential of creating suspicion among the public and reflecting unfavorably upon the community hospital and, therefore, a community hospital must whenever possible avoid such a circumstance so as to fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-029-E.

A deputy chancery clerk entering into a separate employment contract with the county board of supervisors as computer support personnel violates the statute. Op. of Miss. Ethics. Comm. Op. No. 01-030-E.

A board of supervisors contracting with a deputy chancery clerk as computer support personnel produces a circumstance having the potential of creating suspicion among the public and reflecting unfavorably upon the county and, therefore, such a circumstance whenever possible should be avoided in order to fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-030-E.

A community mental health center contracting with a construction company owned by a supervisor who is a member of a board of supervisors that appropriates funding to the community mental health center presents a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the community health center and the county and, therefore, such a circumstance should be avoided in order to fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-032-E.

A city's mayor being employed by a nonprofit corporation when the city transferred a health agency to the nonprofit corporation presents a circumstance that will create suspicion among the public and reflect unfavorably upon the city and, therefore, the mayor is prohibited from being employed, being compensated, or otherwise receiving a pecuniary or personal benefit from the nonprofit corporation that received the transfer of the health agency from the city. Op. of Miss. Ethics. Comm. Op. No. 01-034-E.

One spouse being a manager for a fair commission and thereby having supervisory authority and responsibility over the other spouse as an employee of the fair commission presents a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the fair commission and, therefore, such a circumstance should be avoided in order for full compliance with the public policy mandate and public trust obligation imposed by the statute to be achieved. Op. of Miss. Ethics. Comm. Op. No. 01-036-E.

A city contracting with the spouse of its mayor presents a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the city and, therefore, such a circumstance must be avoided in order for full and complete compliance with the public policy mandate set forth in the statute to be achieved. Op. of Miss. Ethics. Comm. Op. No. 01-039-E.

A Department of Human Services employee being involved in an adoption proceeding on a personal basis when the Department of Human Services must approve all adoptions coming into the state is a circumstance having the potential of creating suspicion among the public and reflecting unfavorably upon the Department of Human Services and, therefore, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-040-E.

A correctional officer employed by the county writing bail bonds for the release of a defendant held in the custody of the county sheriff's department is a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the county and, therefore, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-041-E.

The state conflict of interest laws do not require an elected chief of police to resign in order to qualify as a candidate for the office of sheriff; however, he would be prohibited from campaigning while on duty as chief of police and from using city equipment, supplies, and resources to benefit his campaign for sheriff. Op. of Miss. Ethics. Comm. Op. No. 01-044-E.

An elected police chief being compensated to perform coroner duties within the boundaries of the city he is elected to serve is in a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the city and county and, therefore, such a circumstance must be avoided in order to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-045-E.

A city police officer being compensated for performing coroner duties within the boundaries of the city that employs him is in a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the city and county and, therefore, such a circumstance must be avoided in order to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-045-E.

A county board of supervisors and/or the board of trustees of the county economic development district should avoid purchasing land from a former trustee of the county economic development district in order to fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-046-E.

A mayor participating in matters before the mayor and board of aldermen concerning a regional housing authority employing the mayor can be expected to raise suspicion among the public and reflect unfavorably upon the town and the regional housing authority and, therefore, the mayor would be required to totally and completely recuse himself from matters involving the regional housing authority. Op. of Miss. Ethics. Comm. Op. No. 01-048-E.

A county employee's direct or indirect involvement with matters concerning his employing county that are before the board of aldermen of which he is also a member has the potential of creating suspicion among the public and reflecting unfavorably upon the city and the county and, therefore, a deputy sheriff who also serves as an alderman must totally and completely recuse himself from any matter concerning his county employer coming before the board of aldermen. Op. of Miss. Ethics. Comm. Op. No. 01-049-E.

One spouse having supervisory authority and responsibility over the other spouse as employees of a governmental entity such as a school district constitute a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the school district and, therefore, such a circumstance should be avoided in order to fully comply with the public policy mandate and public trust obligation imposed by the statute. Op. of Miss. Ethics. Comm. Op. No. 01-053-E.

A former state employee accepting employment with a contractor of his former state agency is certainly a circumstance with the potential of creating suspicion among the public and reflecting unfavorably upon the state agency, especially when the former state employee had supervisory authority or personal responsibility over the state agency's contract with the contractor, and, therefore, the state employee was required to totally and completely avoid participating in any discretionary decisions or actions by the state department that could provide a benefit to any company the state employee was considering accepting employment with after terminating employment with the state department in order to fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-054-E.

The appointment of an individual to a community hospital's board of trustees when the individual's child is an employee of the community hospital has the potential of creating suspicion among the public and reflecting unfavorably upon the county and, therefore, such a circumstance should be avoided whenever possible; a potential hospital trustee is required to totally and completely recuse himself from all discussions, actions, and decisions concerning his child's employment with the county hospital when such circumstances cannot be avoided. Op. of Miss. Ethics. Comm. Op. No. 01-056-E.

A legislator being employed by a county as its director of office of planning and development is in a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the legislature and the county as a position as director of a local planning and development office can be expected to be heavily involved in matters such as planning, building, housing, and development over which the legislature has significant control not only in the passage of laws that affect these highly regulated areas but also in the appropriation of funds for use by local governments and subgrantees in these areas; thus, such a circumstance should be avoided whenever possible for full and complete compliance with the public policy mandate set forth in the statute to be achieved. Op. of Miss. Ethics. Comm. Op. No. 01-057-E.

A municipality's police department, including a police officer's wrecker service on the rotation list of wrecker businesses the police contacts to remove a disabled vehicle during an accident investigation presents a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the municipality and, therefore, to avoid violating the public policy mandate set forth in the statute, the municipality must either decline to include the police officer's wrecker service on the rotation list or establish a system that eliminates the creation of public suspicion and the unfavorable reflection upon the municipality. Op. of Miss. Ethics. Comm. Op. No. 01-059-E.

It is not a violation of the state conflict of interest laws for a city's utility commissioner to complete his current term on the city's utility commission after his son-in-law is elected to the city's board of aldermen or for a city's utility commissioner to be reappointed by the board of aldermen on which his son-in-law serves as a father-in-law of a public servant is not a relative for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-061-E.

An alderman participating in the appointment of a city's utility commissioner, who is the alderman's father-in-law, presents a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the city and the city's utility commission and, therefore, in order to fully comply with the public policy mandate set forth the statute, the alderman must completely recuse himself from the board of aldermen's consideration of his father-in-law's reappointment to the city's utility commission. Op. of Miss. Ethics. Comm. Op. No. 01-061-E.

A former executive director of a state agency being compensated for providing consulting services to a business or other governmental agency that received funding from the state agency during the former executive director's tenure constitutes a circumstance with the potential to create suspicion among the public and reflect unfavorably upon the state agency and, therefore, the executive director and the agency would be required to demonstrate that the consulting service contract would not violate the public trust by being a natural consequence of the requestor having been the department's executive director during a period when the department provided funding to the agency. Op. of Miss. Ethics. Comm. Op. No. 01-066-E.

A county supervisor being employed by a not-for-profit corporation when the county has a 10-year lease contract with the not-for-profit corporation is a circumstance that will create suspicion among the public and reflect unfavorably upon the county and, therefore, such a circumstance should be avoided for full compliance with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-067-E.

The employment of a county engineer who represents the county on a wastewater and solid waste management district's technical review committee by a company to manage its public works contract with a city would result in an appearance of impropriety and a violation of the public trust if the company remained a contractor with the wastewater and solid waste management district and if the county engineer's compensation from the company results in a material financial interest in the company. Op. of Miss. Ethics. Comm. Op. No. 01-068-E.

A school board member's direct or indirect involvement with matters concerning a municipality, which he serves as mayor, that are before the school board, and vice versa, has the potential to create suspicion among the public and reflect unfavorably on the school district and the municipality and, therefore, the individual would be required to totally and completely recuse himself from any matter concerning the municipality he serves as mayor that come before the school board and from any matters concerning the school district he serves as a board member that comes before the municipal governing authority. Op. of Miss. Ethics. Comm. Op. No. 01-071-E.

A mayor and a city clerk of a code-chartered municipality being parent and child raises serious public policy concerns as it is a circumstance that will create suspicion among the public and reflect unfavorably upon the municipality, especially as a mayor and city clerk of a code-chartered municipality being parent and child greatly weakens the built in checks and balances provided for in state law; thus, in order to fully and completely comply with the public policy mandate set forth in the statute, the town board should not reappoint/re-employ as the city clerk the child of a new mayor. Op. of Miss. Ethics. Comm. Op. No. 01-073-E.

A school board member's employing a company doing business with a tire company has the potential of creating suspicion among the public and reflecting unfavorably upon a school district if the school board member participates in the school board's decision to award the tire company the contract to provide the school district with its school bus tires and, therefore, the public policy mandate set forth in the statute requires that the school board member totally and completely recuse himself from the school board's actions and decisions concerning the awarding of the bid and the related contract for the purchase of school bus tires. Op. of Miss. Ethics. Comm. Op. No. 01-074-E.

A state department's acceptance of advertising for placement in its state publications from for-profit training schools that certify that individuals are qualified to hold certain licenses issued by the department is a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the department and, therefore, the department should not accept advertising for placement in its state publications from such for-profit training schools in order to fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-076-E.

A city's contracting with a hardware store owned by an alderman's son-in-law has the potential of creating suspicion among the public and reflecting unfavorably upon the city and, therefore, the alderman must totally and completely recuse himself from all discussions, actions, and decisions concerning the city's contracts to purchase from the son-in-law's hardware store. Op. of Miss. Ethics. Comm. Op. No. 01-079-E.

A department head employee of a city having supervisory authority and responsibility over his stepchild as an employee of the city is a circumstance that can be expected to create suspicion among the public and reflecting unfavorably upon the fair commission and, therefore, such a circumstance should be avoided by the city in order to fully comply with the public policy mandate and public trust obligation imposed by the statute. Op. of Miss. Ethics. Comm. Op. No. 01-083-E.

The serious public policy issues and public trust concerns arising from the statute due to one spouse serving as the president of a community college and the other simultaneously being employed by the community college as a teacher are not alleviated by the fact that an interim president made the recommendation to the community college board of trustees to employ the president's spouse and that the interim president signed the employment contract for the president's spouse prior to the appointment of the president and, therefore, the employment of the president's spouse was contrary to public policy. Op. of Miss. Ethics. Comm. Op. No. 01-085-E.

A state trooper working part-time as a county coroner presents a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the department and the county and, therefore, a county coroner should avoid appointing a state trooper as a deputy coroner and/or a state trooper should not accept an appointment as a deputy coroner as either situation would be contrary to the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-087-E.

A city council member should avoid participation as a landlord in a Section 8 Housing Voucher Program administered through the city housing authority and thus fully and completely comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-088-E.

The public policy and public trust mandates set forth in the statute are sufficient to prohibit a community college from offering employment to a current county supervisor serving a county that funds the community college and to prohibit a current county supervisor serving a county that funds the community college from accepting employment with the community college. Op. of Miss. Ethics. Comm. Op. No. 01-089-E.

A county employee's direct or indirect involvement with matters concerning his employing county that are before the county school board of which the county employee is a member has the potential of creating suspicion among the public and reflecting unfavorably upon the county school district and the county and, therefore, the county school board member must recuse himself from all matters coming before the county school board that concern the county should he accept employment with the county. Op. of Miss. Ethics. Comm. Op. No. 01-089-E.

An assistant fire chief who is an agent of a city having supervisory authority and responsibility over his child as a full-time fire fighter employed by the city is in a circumstance that can be expected to create suspicion among the public and reflecting unfavorably upon the city and, therefore, such a circumstance should be avoided by the city and the fire department in order to fully comply with the public policy mandate and public trust obligation imposed by the statute. Op. of Miss. Ethics. Comm. Op. No. 01-0-93E.

The stepchild of a chief of police or the niece of a municipal court clerk acting as a bail bond soliciting agent for defendants held in the custody of the municipal police department or appearing before the municipal court are circumstances that certainly can be expected to create suspicion among the public and reflect unfavorably upon the city and the city's municipal court and, therefore, both circumstances must be avoided by the municipality, the municipal court, the chief of police and the municipal court clerk in order for them to fully and completely comply with the state's public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-094-E.

An alderman's father being employed by the municipality which the alderman serves has the potential of creating suspicion among the public and reflecting unfavorably upon the county and, therefore, such a circumstance should be avoided whenever possible. Op. of Miss. Ethics. Comm. Op. No. 01-095-E.

A spouse of an individual who is a newly appointed state agency board member remaining employed with the state agency during the remaining period of the current budget year after the newly appointed state agency board member has been sworn into office has the potential of creating suspicion among the public and reflecting unfavorably upon the state agency, and the newly appointed state agency board member's recusing himself from employee matters due to his spouse's employment with the state agency for the remaining period of the current budget year is contrary to the public trust and public policy mandates set forth the statute, and, therefore, the spouse should immediately resign as an employee of the state agency so as to fully and completely comply with the public trust and public policy mandates set forth in statute. Op. of Miss. Ethics. Comm. Op. No. 01-098-E.

The administrative officers of the commission, while on official commission business, are prohibited from renting lodging from a "bed and breakfast" that is owned by a property management limited liability company in which one of its commissioners is a principal. Op. of Miss. Ethics. Comm. Op. No. 01-099-E.

Commission employees or agents renting lodging from a business in which one of its commissioners has an interest when the lodging expenses will be paid for, either directly or by reimbursement, by the commission with public funds is a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the commission and, therefore, such a circumstance should be avoided in order for all involved to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-099-E.

A mayor voting to break a tie in a city council vote to give himself a raise to take effect during his current term of office clearly violates the public trust as the raise the mayor will receive is a natural consequence of his own action as mayor to vote to break the tie vote on the authorization of the raise. Op. of Miss. Ethics. Comm. Op. No. 01-103-E.

An owner of a solid waste company serving on the solid waste management authority board presents a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the authority and its members because the public cannot be certain as to whether the board member's decisions are made in the authority's interest, and therefore the public's interest, rather than his company's interest. Op. of Miss. Ethics. Comm. Op. No. 01-105-E.

An employee of a state board that makes home loans acting as the real estate agent for a client seeking a loan through the board is in a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the board and, therefore, the board employee should not act as the real estate agent for a client seeking a loan through the board but rather fully and completely comply with the state's public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-110-E.

An alderman voting on an action to amend the city's beer ordinance to extend the hours during which beer may be sold when the alderman's son-in-law is an owner of a restaurant that will benefit from the extended hours gives rise to a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the city, and therefore, the public policy mandate set forth in the statute requires that the alderman recuse himself from the city board's actions pertaining to the proposed amendment to the beer ordinance. Op. of Miss. Ethics. Comm. Op. No. 01-115-E.

A city council member's participation and vote in the selection of a municipal school board trustee when the council member's spouse is an employee of the municipal school district is a circumstance that has the potential of creating suspicion among the public and reflecting unfavorably upon the city and the municipal school district and, therefore, the city council member should totally and completely recuse himself from the consideration and vote to fully comply with the public policy mandate set forth in the statute. Op. of Miss. Ethics. Comm. Op. No. 01-117-E.

A legislator/attorney could form a law firm that would be a limited-liability corporation that would enter into a contractual agreement for legal services with another law firm that was representing or would represent in the future certain state agencies where, under the proposed contractual agreement, the limited-liability corporation will be hired to work on specific, nongovernmental files as the vast majority of the other firm's clients and the work performed by the firm involved legal matters which were not pursuant to a state contract or funded with state dollars and the the legislator/attorney's incorporated law firm would not be providing legal services exclusively for the other firm and, therefore, the legislator/attorney's firm would not be interested, directly or indirectly, in the other firm's limited number of state or state funded contracts under the proposed contractual agreement. Op. of Miss. Ethics. Comm. Op. No. 01-119-E.

No violation of the statute occurs when the mayor and board of aldermen employ the parent of a current employee of a city department, such as the police or fire department, as the head of that city department; however, the parent's later actions as a department head that provide a pecuniary benefit to the child/employee, such as a recommendation for promotion, will result in a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-122-E.

A city department head having supervisory authority and responsibility over his child as an employee of the city is part of a circumstance that can be expected to create suspicion among the public and reflect unfavorably upon the city and, therefore, such a circumstance should be avoided by the city in order to fully and completely comply with the public policy mandate and public trust obligation imposed by the statute. Op. of Miss. Ethics. Comm. Op. No. 01-122-E.

A deputy sheriff may not have a material financial interest in a bail bonding company that writes bail bonds for the release of defendants in the custody of the county sheriff, and, therefore, a bail bonding company is prohibited from writing bail bonds for the release of defendants confined in the county detention center of the county the deputy sheriff serves if the bail bonding company is owned by the deputy sheriff's spouse, parent, or child. Op. of Miss. Ethics. Comm. Op. No. 01-124-E.

A state trooper may also be employed part-time as a county civil defense director, but should avoid contracting with any division of a county government that he is directly or indirectly involved with through his state employment. Op. of Miss. Ethics. Comm. Op. No. 02-014-E.

A city alderman must recuse himself from all city discussions and actions related to a developer subdividing lots within the alderman's neighborhood. Op. of Miss. Ethics. Comm. Op. No. 02-023-E.

A county supervisor's direct or indirect involvement with matters concerning his employing community college or the community college with which he contracts that are before the board of supervisors has the potential of creating suspicion among the public and reflecting unfavorably upon the community college and the county; this is a reason why the requestor is advised to recuse himself from all matters coming before the board that concern the community college. Op. of Miss. Ethics Comm. Op. No. 02-072-E.

The public policy mandate set forth in § 25-4-101 is a sufficient reason for a city to avoid contracting or subcontracting with a business that employs its alderman. Op. of Miss. Ethics Comm. Op. No. 02-073-E.

A mayor benefitting from the city's historic preservation district tax abatement program, in order to comply with the state's public policy mandate set forth in § 25-4-101, must totally and completely recuse himself from all matters related to the city approving tax abatement on the improvements to his building. Op. of Miss. Ethics Comm. Op. No. 02-075-E.

A member of the state board overseeing state-sponsored savings plans who is also a registered investment broker employed by an investment company must recuse himself from all matters coming before the board related to his investment company employer and its other broker/dealers brokering state savings plans to its customers, including the approval of the third party advisor plan, to fully and completely comply with the public policy mandate set forth in § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 02-076-E.

A governmental entity's board member should recuse himself or herself from any action that comes before his or her board that concerns a request of a quasi-governmental board on which he or she also serves. Op. of Miss. Ethics Comm. Op. No. 02-079-E.

Because employment of an alderman's daughter by the city as city prosecutor has the potential of creating suspicion among the public and reflecting unfavorably upon the city, the alderman must totally and completely recuse himself from all discussions, actions and decisions concerning his daughter's employment contract with the city. Op. of Miss. Ethics Comm. Op. No. 02-081-E.

Where a commission member holds a leadership role in a trade association that represents licensees which the commission is charged with regulating, the potential of creating suspicion among the public and reflecting unfavorably upon the state exists and the member must totally and completely recuse himself from all discussions, actions and decisions concerning the trade association. Op. of Miss. Ethics Comm. Op. No. 02-083-E.

A city police officer serving as a constable for the county in which the city police officer's employing city is located has the potential of creating suspicion among the public and reflecting unfavorably upon his city employer, therefore, the officer should avoid performing his constable duties in circumstances where he as a police officer would be directly or indirectly involved in such circumstances by way of his city law enforcement authority so as to fully comply with the public policy mandate set forth in § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 02-088-E.

A legislator being the attorney of record for a business receiving a state grant has the potential of creating suspicion among the public and reflecting unfavorably upon the state, therefore, the legislator must totally and completely recuse himself from all discussions, actions and decisions of the Legislature concerning the business. Op. of Miss. Ethics Comm. Op. No. 02-089-E.

Representation by a legislator or his law firm of a business in an action brought under the state's Public Records Act to prevent the release of grant information to the public, especially where the grant funding was appropriated by the Legislature, is a circumstance that will appear suspicious to the public and cause the state and Legislature to appear in an unfavorable light, therefore, neither the legislator nor his law firm should represent the business in the action. Op. of Miss. Ethics Comm. Op. No. 02-089-E.

A teacher's participation in a booster club that also sells pre-game meals to a school presents a circumstance having the potential of creating suspicion among the public and reflecting unfavorably upon the school district, therefore, the teachers must be careful to avoid any situations that would cause the public concern related to contracts between the booster club and the school district. Op. of Miss. Ethics Comm. Op. No. 02-091-E.

The state's public policy of public service being a public trust forbids a state agency's deputy administrator from serving in dual public positions when one position supervises the approval, issuance and regulation of a grant received by another governmental entity she serves as a board member. Op. of Miss. Ethics Comm. Op. No. 02-095-E.

A mayor may participate in a hearing to re-zone property from agricultural to residential use when the owners of the property may in the future request the property to be re-zoned commercial for a funeral home that would compete with the mayor's business. Op. of Miss. Ethics Comm. Op. No. 02-100-E.

A legislator is prohibited from serving as a board member of a human resource agency. Op. of Miss. Ethics Comm. Op. No. 02-103-E.

A recreational authority's executive director, is prohibited from serving a city/county sports officials organization as an officer when his position as the authority's executive director is responsible for oversight of its contract with the organization. Op. of Miss. Ethics Comm. Op. No. 02-111-E.

A city board is not barred from authorizing a contract with an insurance company when such authorization occurs after an alderman's and his spouse's full divestiture of their interests in the insurance company; however, the alderman must be advised that he should totally and completely recuse himself from any decision of the city board to contract with the company. Op. of Miss. Ethics Comm. Op. No. 02-115-E.

Conflict of interest laws do not prohibit a mayor from reappointing his brother-in-law to serve on a housing authority board. Op. of Miss. Ethics Comm. Op. No. 02-117-E.

It is not as such a violation of the state conflict of interest laws for a state conservation officer to be employed as a patrol officer for a levee board. Op. of Miss. Ethics Comm. Op. No. 02-118-E.

If a county supervisor was a member of the board that authorized the levy of an emergency telephone service charge to fund the E-911 Commission, Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit the supervisor's spouse from remaining employed with the E-911 Commission after their marriage and this prohibition will apply until one year after the supervisor has left office. Op. of Miss. Ethics Comm. Op. No. 02-119-E.

It is not as such a violation of the conflict of interest laws for an attorney whose firm represents a municipality to simultaneously serve as a municipal school board member as the municipality and the school district are separate governmental authorities as defined in Code Section 25-4-103(g)(h). Op. of Miss. Ethics Comm. Op. No. 02-120-E.

A school board is prohibited by Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) from hiring a prospective school board member's law firm and/or an insurance company when the school district's contract with the law firm or the insurance company was authorized by the school board during the prospective school board member's term or within one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-120-E.

A county supervisor may not in any way be involved in the board of supervisors' decision to appoint his stepchild to a community college board of trustees as his involvement would result in a violation of Code Section 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 02-121-E.

A community college may contract for energy savings services with Company C when that company and Company A, for which a college trustee serves as a member of the board of directors, are both subsidiaries of Company B, because the trustee's interest in Company C's energy savings agreement with the college by way of his directorship with Company A is outside the "edge of the target" necessary for violating Mississippi Constitution Section 4-109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 02-122-E.

Conflict of interest laws do not prohibit a planning commission from contracting with a business whose past employee now works as executive director of the planning commission nor do the conflict of interest laws impose a waiting period before such a contract may occur. Op. of Miss. Ethics Comm. Op. No. 02-127-E.

Conflict of interest laws do not prohibit a prosecuting attorney from being employed by the state and a municipality; however the attorney is prohibited by Code Section 25-4-105(1) from using her official position to obtain a pecuniary benefit for herself or a business with which she is associated, and she must avoid involvement with any prosecution of a matter concerning the division of the state also employing her in order to fully comply with the public policy mandate set forth in Code Section 25-4-101. Op. of Miss. Ethics Comm. Op. No. 02-132-E.

City employees participating in a HUD loan program would not violate Code Section 25-4-105(3)(a) by receiving the down payment assistance administered by the city; however, to fully and completely comply with the public policy mandate set forth in Code Section 25-4-101, the city and employees should avoid situations related to the program if the employees appear to realize personal gain through official conduct. Op. of Miss. Ethics Comm. Op. No. 02-134-E.

Failure of an aldermen to totally and completely recuse himself from matters pertaining to a re-zoning issue that could affect the value of his property would result in his violating Code Section 25-4-105(1) should he receive a pecuniary benefit through an increase or avoidance of a decrease in the value of his property, in addition to his failing to comply with state public policy as mandated in Code Section 25-4-101. Op. of Miss. Ethics Comm. Op. No. 02-135-E.

Conflict of interest laws do not as such prohibit an individual from simultaneously holding the employment positions of county school resource officer, constable and county youth court compliance officer. Op. of Miss. Ethics Comm. Op. No. 02-136-E.

The conflict of interest laws do not prohibit a municipality from purchasing sports uniforms from an alderman's son's business as long as the alderman has no direct or indirect interest in the son's business's contract with the city to sell the uniforms. Op. of Miss. Ethics. Comm. Op. No. 03-001-E.

A school district would not be prohibited from continuing to furnish teachers to a city-operated community center employing a newly elected school board member as assistant director of the city community center. Op. of Miss. Ethics. Comm. Op. No. 03-002-E.

A member of the county board of supervisors would be prohibited from using his official position to approve his father's employment as the county district's road construction manager in a beat system county; to avoid a violation, the supervisor may not in any way be involved in the decision to employ his father with the county and, in addition, may not be involved in any decisions concerning pay raises or the increasing of other benefits that would benefit his father's county employment. Op. of Miss. Ethics. Comm. Op. No. 03-003-E.

Conflict of interest laws do not prohibit an individual from simultaneously holding the employment position of constable while also employed as a Department of Transportation law enforcement officer, a president/fire chief of a volunteer fire department, an operator of a water association and a part-time campus police officer for a county school district. Op. of Miss. Ethics. Comm. Op. No. 03-004-E.

There is no specific time limit applicable to Code Section 25-4-101 that would automatically allow an alderman who previously had an interest in the insurance company to avoid the public policy issue when participating in a vote by his board related to the insurance company. Op. of Miss. Ethics. Comm. Op. No. 03-007-E.

It is not a violation of the conflict of interest laws for a city's buildings and grounds director to simultaneously serve as a county supervisor when the employing city is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-009-E.

In order to avoid violating conflict of interest laws by contracting with a publishing company to develop material that could be approved as an educational curriculum, a part-time employee of a state university, who performs professional development and implementation of programs work under a contract between the university and the department of education to develop curriculum frameworks for the department of education, must recuse himself, in his university job, from all matters concerning the publishing company. Op. of Miss. Ethics. Comm. Op. No. 03-012-E.

Conflict of interest laws do not prohibit City A's alderman from also serving as the board attorney of City B when City B's alderman is employed by City A because the two municipalities are separate governmental entities as set forth in the definitions in Code Section 25-4-103(g)(ii) and (h). Op. of Miss. Ethics. Comm. Op. No. 03-013-E.

It is not a violation of the conflict of interest laws for a city firefighter to simultaneously serve as a county supervisor, even though the employing city is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-014-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) would prohibit the son of a member of the city council from remaining employed with the city if the council member does, in fact, have an interest, direct or indirect, in the son's employment contract; to avoid using his official position to obtain a pecuniary benefit for his son, the council member must totally and completely recuse himself from subject matters providing a pecuniary benefit to the son. Op. of Miss. Ethics. Comm. Op. No. 03-015-E.

It is not a violation of the conflict of interest laws for a school teacher to simultaneously serve as a county supervisor, even though the employing school district is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-018-E.

Code Section 25-4-105(1) would absolutely prohibit a county supervisor from participating in and voting on the issuance of Tax Increment Financing Bonds if a subsidiary corporation employing the supervisor's daughter was developing the area or involved in any other way; the only way the supervisor could avoid a violation would be to totally and completely recuse himself from all discussions, actions and votes of the board of supervisors related to the authorization and issuance of the bonds. Op. of Miss. Ethics. Comm. Op. No. 03-019-E.

Conflict of interest laws do not prohibit an individual from serving as city judge when the individual's sister or brother serves as an alderman for the same city. Op. of Miss. Ethics. Comm. Op. No. 03-021-E.

Conflict of interest laws will not prohibit a police chief, whose cousin also serves the same city as alderman, from serving a city, unless the alderman has a direct or indirect interest in the employment contract. Op. of Miss. Ethics. Comm. Op. No. 03-021-E.

It is not a violation of the conflict of interest laws for a board of supervisors to appoint an individual to the position of jury commissioner when the individual's spouse serves the county as deputy circuit clerk. Op. of Miss. Ethics. Comm. Op. No. 03-026-E.

It is not a violation of the conflict of interest laws for a board of supervisors to appoint an individual to the position of jury commissioner when the individual's spouse serves the county as deputy circuit clerk. Op. of Miss. Ethics. Comm. Op. No. 03-026-E.

Conflict of interest laws do not prohibit the mother of a state board executive director from assisting a state agency in an investigation, on a pro bono basis, when the mother has a specific medical condition conducive to helping in the conduct of an investigation of possible professional misconduct by individuals regulated by the state agency in question. Op. of Miss. Ethics. Comm. Op. No. 03-027-E.

Conflict of interest laws do not prohibit a municipal court judge from also serving as the county youth court prosecutor when the municipality is located within the county the youth court prosecutor serves. Op. of Miss. Ethics. Comm. Op. No. 03-028-E.

A state university instructor, if elected as a member of the Legislature, must resign from her position with the university prior to the Legislature appropriating funding for the university during her term of office. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

State conflict of interest laws do not prohibit a state university instructor from being a candidate for the Legislature; however, Code Sections 25-4-101 and 25-4-105(1) both prohibit a university instructor from campaigning for elected office during the hours when she is carrying out public duties and being compensated by the state, and from using state equipment, supplies or other resources in any campaign activity. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

The employment of a Legislator's spouse as a university instructor compensated with funds appropriated by the Legislature would not violate Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) due to the Supreme Court's "large class rule"being applicable to the circumstance. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

Conflict of interest laws do not as such prohibit a Legislator's spouse from serving as a county public defender. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

Conflict of interest laws do not as such prohibit a legislative candidate or an elected Legislator from serving on a city planning and zoning commission. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

It is not a violation of the conflict of interest laws for a city planning and zoning commissioner's spouse to receive compensation from the same city related to city misdemeanor cases. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

Conflict of interest laws do not prohibit an individual from serving as a county constable while simultaneously employed by the Department of Human Services as a child support enforcement officer; however, the individual may not perform the duties and responsibilities of a constable when on duty with the state and being paid by the state or using state resources. Op. of Miss. Ethics. Comm. Op. No. 03-039-E.

A town may contract with the municipal court clerk's spouse's business to maintain the town's cemetery without the clerk violating Code Section 25-4-105(3)(a), where the exception set forth in Code Section 25-4-103(k)(iv) is applicable. Op. of Miss. Ethics. Comm. Op. No. 03-040-E.

It is not a violation of the conflict of interest laws for the county to hire the county tax assessor/collector's spouse as a road foreman. Op. of Miss. Ethics. Comm. Op. No. 03-042-E.

Where an employee of a planning and development district married executive director's daughter, as the son-in-law's supervisor and the district's executive director, the director may not transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline the son-in-law as a district employee. Op. of Miss. Ethics. Comm. Op. No. 03-045-E.

OPINIONS OF THE ATTORNEY GENERAL

Member of Board of Directors for Mississippi Home Corporation could accept full time position as senior attorney for Mississippi Tort Claims Board; since both positions are in executive branch of state government, there is no violation of the separation of powers provisions of Article I, Sections 1 and 2, Mississippi Constitution of 1890 and there appears to be no violation of Mississippi Ethics in Government laws, Sections 25-4-101, et seq., since neither position has impact on appointment to or compensation of the other. 1994 Miss. Op. Att'y Gen. 1015.

Accepting as fact that no benefit will accrue to a board member/tenant by the installation of a culvert, and if the board finds on its minutes that the placement of the culvert would be of public benefit, under Section 25-4-101, there is no prohibition against a board member voting for the motion to install it. 1995 Miss. Op. Att'y Gen. 69.

A municipality may not adopt ordinances that address the area of ethics, as this area has been preempted by state law. 2002 Miss. Op. Att'y Gen. 119.

The Separation of Powers doctrine, Miss. Const., Art. 1, §§ 1-2, prohibits an individual from holding two offices in two different branches of government simultaneously. An individual may simultaneously serve as a member of a county school board and as county circuit clerk because both offices are within the executive branch of the government. 2007 Miss. Op. Att'y Gen. 74, 2007 Miss. AG LEXIS 22.

§ 25-4-103. Definitions.

The following definitions apply in this article unless the context otherwise requires:

(a) "Authority" means any component unit of a governmental entity.

(b) "Benefit" means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(c) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint-stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(d) "Business with which he is associated" means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars ($2,500.00) in annual income or over which such public servant or his relative exercises control.

(e) "Compensation" means money or thing of value received, or to be received, from any person for services rendered.

(f) "Contract" means:

(i) Any agreement to which the government is a party; or

(ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) "Government" means the state and all political entities thereof, both collectively and separately, including, but not limited to:

(i) Counties;

(ii) Municipalities;

(iii) All school districts;

(iv) All courts; and

(v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(h) "Governmental entity" means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(i) "Income" means money or thing of value received, or to be received, from any source derived, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(j) "Intellectual property" means any formula, pattern, compilation, program, device, method, technique or process created primarily as a result of the research effort of an employee or employees of an institution of higher learning of the State of Mississippi.

(k) "Material financial interest" means a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other. Notwithstanding the foregoing, the following shall not be deemed to be a material financial interest with respect to a business with which a public servant may be associated:

(i) Ownership of any interest of less than ten percent (10%) in a business where the aggregate annual net income to the public servant therefrom is less than One Thousand Dollars ($1,000.00);

(ii) Ownership of any interest of less than two percent (2%) in a business where the aggregate annual net income to the public servant therefrom is less than Five Thousand Dollars ($5,000.00);

(iii) The income as an employee of a relative if neither the public servant or relative is an officer, director or partner in the business and any ownership interest would not be deemed material pursuant to subparagraph (i) or (ii) herein; or

(iv) The income of the spouse of a public servant when such spouse is a contractor, subcontractor or vendor with the governmental entity that employs the public servant and the public servant exercises no control, direct or indirect, over the contract between the spouse and such governmental entity.

(*l*) "Pecuniary benefit" means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(m) "Person" means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a governmental entity.

(n) "Property" means all real or personal property.

(o) "Public funds" means money belonging to the government.

(p) "Public servant" means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the State of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

(q) "Relative" means:

(i) The spouse of the public servant;

(ii) The child of the public servant;

(iii) The parent of the public servant;

(iv) The sibling of the public servant; and

(v) The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).

(r) "Securities" means stocks, bonds, notes, convertible debentures, warrants, evidences of debts or property or other such documents.

HISTORY:

Laws, 1983, ch. 469, § 2 [See Editor's Note below]; Laws, 1991, ch. 572 § 1; Laws, 1992, ch. 530, § 9; Laws, 2008, ch. 562, § 12, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 12.

Section 2 of Chapter 482, Laws of 1984, proposed to amend § 25-4-103, effective from and after the date Senate Concurrent Resolution No. 548 of the 1984 Regular Session of the Mississippi Legislature (Chapter 655, Laws, 1984) was ratified by the electorate in November 1984. Senate Concurrent Resolution No. 548 (Chapter 655, Laws, 1984) proposed to amend § 109 of the Mississippi Constitution, and to repeal §§ 107 and 210 of the Mississippi Constitution. The Senate Concurrent Resolution No. 548 was submitted to the electorate for ratification in November 1984, but was rejected; thus the proposed amendment to § 25-4-103 never became effective.

Cross References —

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Application of this section to prohibition against giving any pecuniary benefit to the public service commission, its staff or employees, see § 77-1-11.

JUDICIAL DECISIONS

1. In general.

Step-son of an asphalt company owner, who was also a local governmental board member, bid on public construction project, and the step-son was awarded the project; the Mississippi Ethics Commission erred in determining that step-son was a relative because Miss. Code Ann. § 25-4-103(q) was plain, clear, and unambiguous, and "step-son" was not included in the statutory definition of relative. Miss. Ethics Comm'n v. Grisham, 957 So. 2d 997, 2007 Miss. LEXIS 328 (Miss. 2007).

A public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he or she is associated is not considered a "member" of that entity as the term is applied in §§ 25-4-101 et seq of the Ethics in Government laws. Moore ex rel. Chickasaw County v. McCullough, 633 So. 2d 421, 1993 Miss. LEXIS 505 (Miss. 1993).

ETHICS OPINIONS

A community college is not considered a "business" as defined subsection (c) of this section. Op. of Miss. Ethics Comm. Op. No. 97-144-E.

A community hospital is an authority of the political subdivision that owns it as defined in § 25-4-103(a) and therefore is not a separate governmental entity as defined in § 25-4-103(h). Op. of Miss. Ethics Comm. Op. No. 97-145-E.

A governmental board's nonvoting member's private nonprofit association is prohibited from contracting with the governmental board should it qualify as a business under the definition set forth in subsection (c) and should the nonvoting member have a material financial interest in the private nonprofit association as defined in paragraph (ii) of subsection (k). Op. of Miss. Ethics. Comm. Op. No. 97-155-E.

A county administrator may serve as an advisory board member of a bank and own stock in the bank, even though the bank does business with the county, as long as the administrator owns less than 2 percent of the bank and his income from the bank remains under the $5,000.00 aggregate annual net income threshold. Op. of Miss. Ethics Comm. Op. No. 98-002-E.

A community hospital's chief executive officer and chief financial officer under the manager's contract with the community hospital may simultaneously serve as uncompensated board members and officers of a nonprofit corporation organized and operated exclusively to promote health and healthcare in the community hospital's service area even though the nonprofit corporation will receive financial assistance and grants from the community hospital. Op. of Miss. Ethics Comm. Op. No. 98-005-E.

An employee of a community hospital holding the position of vice president of clinical services may simultaneously serve as an uncompensated board member and officer of a nonprofit corporation organized and operated exclusively to promote health and healthcare in the community hospital's service area even though the nonprofit corporation will receive financial assistance and grants from the community hospital. Op. of Miss. Ethics Comm. Op. No. 98-005-E.

It is not a violation of the state conflict of interest laws for a constable to do private investigative work for an indigent defendant in a capital murder case in a county other than the county the constable is elected to serve when appointed to do so by the Circuit Court. Op. of Miss. Ethics Comm. Op. No. 98-007-E.

A municipality may contract with an office supply store owned by the spouse of one of the municipality's utilities clerks where the clerk exercises no control, direct or indirect, over the contract between the spouse and the municipality. Op. of Miss. Ethics Comm. Op. No. 98-029-E.

A state-appointed member of the Board of Registration for Professional Engineers and Land Surveyors may serve a political party as the county chairperson, as a district chairperson, and as the state secretary of the executive committee. Op. of Miss. Ethics Comm. Op. No. 98-072-E.

Water and sewer district commissioners are public servants within the meaning of this section. Op. of Miss. Ethics Comm. Op. No. 98-089-E.

A nonprofit corporation is a business and not a governmental entity for purposes of this section. Op. of Miss. Ethics Comm. Op. No. 99-061-E.

A nonprofit foundation met the definition of "government" as set forth in subsection (g)(v) where it was established by an order of a county board of supervisors to carry out the board of supervisors' grant of public power to provide necessary and proper relief and support to the county's poor and to expend public funds for treatment of the indigent sick and to promote public health in the county. Op. of Miss. Ethics. Comm. Op. No. 99-103-E.

A law enforcement officer's spouse is not as such prohibited by the conflict of interest laws from writing bail bonds for the release of defendants confined in the jail of the law enforcement officer's entity as a soliciting bail agent for a bail bond company if neither the law enforcement officer nor his spouse is an officer, director, or partner in the bail bond company and they have no ownership interest in the bail bond company; however, the law enforcement officer must totally and completely remove himself from the approval of any surety bail bond with which she or her bail bond company employer is associated. Op. of Miss. Ethics. Comm. Op. No. 99-106-E.

A state agency could contract with a company where the president of the company was the spouse of an employee of the state agency as the state agency employee was not in an employment position that allowed her to exercise control, direct or indirect, over the contract between her spouse's company and the state agency and also had no personal or pecuniary interest in the company except through her spouse's personal and pecuniary interest; however, the state agency would be required to establish rules and procedures to prevent the employee from discussing her spouse's company's bid, and, if applicable later, her spouse's company's contract with state agency staff or any other person including casual comments, as well as detailed discussions, made in person, by telephone or by any other means. Op. of Miss. Ethics. Comm. Op. No. 99-E.

It is not as such a violation of the conflict of interest laws for a town to purchase land from the mayor's father-in-law for its appraised value when the land has been designated essential for water facility expansion, primarily because a father-in-law of a public servant is not a relative within the meaning of the statute. Op. of Miss. Ethics. Comm. Op. No. 99-113-E.

An attorney for a board of trustees of a public school district who is paid monthly based on an hourly rate, plus reimbursement of expenses, is a "public servant" of the school district for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-005-E.

Mississippi Technology, Inc. is not a part of government for the purpose of the state's conflict of interest laws, even though it does expend public funds, at it was not created by statute, ordinance, or executive order. Op. of Miss. Ethics. Comm. Op. No. 00-034-E.

Mississippi Technology, Inc. board members are not public servants for the purpose of the state's conflict of interest laws. Op. of Miss. Ethics. Comm. Op. No. 00-034-E.

The county port authority could accept a bid from and contract with a towing company to do maintenance and repair work on the county port authority's barge fleet area when the towing company was also the lessee of the county port authority's barge fleet area as neither the towing company nor its owner were public servants. Op. of Miss. Ethics. Comm. Op. No. 00-071-E.

A school district can employ its business manager's brother as assistant business manager and its business manager's sister-in-law as assistant payroll clerk as a brother and a sister-in-law are not relatives for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-053-E.

It is not a violation of the state conflict of interest laws for a city's utility commissioner to complete his current term on the city's utility commission after his son-in-law is elected to the city's board of aldermen or for a city's utility commissioner to be reappointed by the board of aldermen on which his son-in-law serves as a father-in-law of a public servant is not a relative for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-061-E.

A board of aldermen can accept a bid to purchase a backhoe from a company that employs the brother of one of the aldermen as a brother is not a "relative" for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-104-E.

A deputy chancery clerk is prohibited by § 25-4-105(3)(a) from simultaneously holding a part-time position with the same county's sheriff department/correctional facility as the chancery clerk's office and the sheriff's department are considered to be within the same county authority for purposes of conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 02-050-E.

An individual serving as the county public defender may also serve as a justice court judge appointed by the county board of supervisors to fill an unexpired justice court judge's term. Op. of Miss. Ethics Comm. Op. No. 02-097-E.

County board of supervisors is not prohibited from assigning to the comptroller of a county additional job duties and responsibilities, including those of maintaining the records for the county's fire commission, or setting the comptroller's compensation for performing those duties. Op. of Miss. Ethics Comm. Op. No. 02-098-E.

It is not a violation of the conflict of interest laws for a city council member to simultaneously serve as director of the county emergency communications commission, created by the county board of supervisors, so long as no contracts exist between the two governmental entities, the county and the city, in which the city council member would have an inherent interest and/or a private pecuniary benefit. Op. of Miss. Ethics Comm. Op. No. 02-104-E.

A Department of Correction employee may also hold the position of county supervisor. Op. of Miss. Ethics Comm. Op. No. 02-105-E.

Conflict of interest laws do not prohibit a mayor from reappointing his brother-in-law to serve on a housing authority board. Op. of Miss. Ethics Comm. Op. No. 02-117-E.

It is not as such a violation of the state conflict of interest laws for a state conservation officer to be employed as a patrol officer for a levee board. Op. of Miss. Ethics Comm. Op. No. 02-118-E.

It is not as such a violation of the conflict of interest laws for an attorney whose firm represents a municipality to simultaneously serve as a municipal school board member, as the municipality and the school district are separate governmental authorities as defined in Code Section 25-4-103(g)(h). Op. of Miss. Ethics Comm. Op. No. 02-120-E.

A school board is prohibited by Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) from hiring a prospective school board member's law firm and/or an insurance company hiring the prospective school board member's law firm when the school district's contract with the law firm or the insurance company was authorized by the school board during the prospective school board member's term or within one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-120-E.

A county supervisor may not in any way be involved in the board of supervisors' decision to appoint his stepchild to a community college board of trustees as his involvement would result in a violation of Code Section 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 02-121-E.

An individual employed and compensated by a business that is a contractor with a regional correctional facility does not qualify as a public servant under Code Section 25-4-103(p)(i)(ii)(iii); therefore, the conflict of interest laws would not prohibit that individual from writing bail bonds for offenders held in the county jail. Op. of Miss. Ethics Comm. Op. No. 02-128-E.

A school district may contract with a school teacher's spouse's business to purchase sporting equipment without the school teacher violating Code Section 25-4-105(3)(a) if, in accord with the exception in Code Section 25-4-103(k)(iv), the teacher has no direct or indirect control over the contracts between the district and her spouse's business. Op. of Miss. Ethics Comm. Op. No. 02-125-E.

An employee of the Mississippi Department of Health is not prevented from operating a daycare as the employee's use of her official position is a necessary element to violate Code Section 25-4-105(1); however the employee must be careful to recuse herself from all matters coming before her state job related to the daycare with which she is associated to ensure she does not violate that section. Op. of Miss. Ethics Comm. Op. No. 02-126-E.

An employee of the Mississippi Department of Health is not prevented from operating a daycare as an employee's use of her official position is a necessary element for violation of Code Section 25-4-105(1); however the employee must be careful to recuse herself from all matters coming before her state job related to the daycare with which she is associated to ensure she does not violate that section. Op. of Miss. Ethics Comm. Op. No. 02-126-E.

Because the executive director of a nonprofit organization, as a legislator, would be a public servant under Code Section 25-4-103(p)(i), if he had within his job duties as a compensated director of the organization the responsibility to attempt to persuade legislators to pass laws, he would be certain to violate Code Section 25-4-105(3)(d). Op. of Miss. Ethics Comm. Op. No. 02-130-E.

Code Section 25-4-105(3)(a) does not prohibit a chancellor, who does not have a primary office provided by the county, from using the per annum provided by the Administrative Office of the Courts under Code Section 9-1-36(8) to pay rent expense on office space owned and provided by the chancellor and used as his primary office; furthermore, Code Section 25-4-105(1), is not applicable as the authorized per annum is considered compensation provided for by law. Op. of Miss. Ethics. Comm. Op. No. 03-006-E.

The Office of State Aid Road Construction is not prohibited by the conflict of interest laws from employing the spouse of the Department of Transportation's chief engineer. Op. of Miss. Ethics. Comm. Op. No. 03-008-E.

It is not a violation of the conflict of interest laws for a city's buildings and grounds director to simultaneously serve as a county supervisor when the employing city is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-009-E.

Conflict of interest laws do not prohibit City A's alderman from also serving as the board attorney of City B when City B's alderman is employed by City A because the two municipalities are separate governmental entities as set forth in the definitions in Code Section 25-4-103(g)(ii) and (h). Op. of Miss. Ethics. Comm. Op. No. 03-013-E.

It is not a violation of the conflict of interest laws for a city firefighter to simultaneously serve as a county supervisor, even though the employing city is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-014-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) would prohibit the son of a member of the city council from remaining employed with the city if the council member does, in fact, have an interest, direct or indirect, in the son's employment contract; to avoid using his official position to obtain a pecuniary benefit for his son, the council member must totally and completely recuse himself from subject matters providing a pecuniary benefit to his son. Op. of Miss. Ethics. Comm. Op. No. 03-015-E.

A state employee is prohibited from having a material financial interest in an outsourcing business as a part owner if the business enters into a contract to provide services to any agencies, departments or commissions of the state. Op. of Miss. Ethics. Comm. Op. No. 03-016-E.

After purchasing a residential property from the county board of education, a town is prohibited from selling or lease the property to an alderman who currently resides in the property as the school's principal. Comm. Op. No. 03-017-E.

After purchasing a residential property from the county board of education, a town is prohibited from leasing the property to the county board of education for use as the residence of the school's principal who is also the town's alderman. Comm. Op. No. 03-017-E.

It is not a violation of the conflict of interest laws for a school teacher to simultaneously serve as a county supervisor, even though the employing school district is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-018-E.

Code Section 25-4-105(1) would absolutely prohibit a county supervisor from participating in and voting on the in the issuance of Tax Increment Financing Bonds if a subsidiary corporation employing the supervisor's daughter was developing the area or involved in any other way; the only way the supervisor could avoid a violation would be to totally and completely recuse himself from all discussions, actions and votes of the board of supervisors related to the authorization and issuance of the bonds. Op. of Miss. Ethics. Comm. Op. No. 03-019-E.

Code Section 25-4-105(3)(a) will prohibit a county planning commission member from being employed and compensated by the county sheriff's department as a part-time deputy sheriff. Op. of Miss. Ethics. Comm. Op. No. 03-020-E.

Conflict of interest laws do not prohibit an individual from serving as city judge when the individual's sister or brother serves as an alderman for the same city. Op. of Miss. Ethics. Comm. Op. No. 03-021-E.

Conflict of interest laws will not prohibit a police chief, whose cousin also serves the same city as alderman, from serving a city, unless the alderman has a direct or indirect interest in the employment contract. Op. of Miss. Ethics. Comm. Op. No. 03-021-E.

A town may contract with the municipal court clerk's spouse's business to maintain the town's cemetery without the clerk violating Code Section 25-4-105(3)(a), where the exception set forth in Code Section 25-4-103(k)(iv) is applicable. Op. of Miss. Ethics. Comm. Op. No. 03-040-E.

OPINIONS OF THE ATTORNEY GENERAL

Campaign contributions legally received from regulated utility companies during a prior Mississippi House of Representatives campaign, that were not spent during that campaign, can be used in a prospective upcoming campaign for Public Service Commissioner even though they would otherwise be prohibited contributions, so long as they were made prior to any discussion or consideration of running for Public Service Commissioner and prior to becoming a candidate for the office, as described in Miss. Code Ann. § 77-1-11. 2007 Miss. Op. Att'y Gen. 71, 2007 Miss. AG LEXIS 20.

§ 25-4-105. Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable; penalties.

(1) No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

(b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

(c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

(d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

(4) Notwithstanding the provisions of subsection (3) of this section, a public servant or his relative:

(a) May be an officer or stockholder of banks or savings and loan associations or other such financial institutions bidding for bonds, notes or other evidences of debt or for the privilege of keeping as depositories the public funds of a governmental entity thereof or the editor or employee of any newspaper in which legal notices are required to be published in respect to the publication of said legal notices.

(b) May be a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a contractor or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where such contract is let to the lowest and best bidder after competitive bidding and three (3) or more legitimate bids are received or where the goods, services or property involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(c) May be a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where the primary contract is let to the lowest and best bidder after competitive bidding or where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(d) May be a contractor, subcontractor or vendor with any authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a contractor, subcontractor or vendor with any authority of the governmental entity of which he is a member, officer, employee or agent: (i) where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws; or (ii) where the contractual relationship involves the further research, development, testing, promotion or merchandising of an intellectual property created by the public servant.

(e) May purchase securities issued by the governmental entity of which he is an officer or employee if such securities are offered to the general public and are purchased at the same price as such securities are offered to the general public.

(f) May have an interest less than a material financial interest in a business which is a contractor, subcontractor or vendor with any governmental entity.

(g) May contract with the Mississippi Veteran's Home Purchase Board, Mississippi Housing Finance Corporation, or any other state loan program, for the purpose of securing a loan; however, public servants shall not receive favored treatment.

(h) May be employed by or receive compensation from an authority of the governmental entity other than the authority of the governmental entity of which the public servant is an officer or employee.

(i) If a member of the Legislature or other public servant employed on less than a full-time basis, may represent a person or organization for compensation before an authority of the governmental entity other than an authority of the governmental entity of which he is an officer or employee.

(j) If a constable, may be employed and receive compensation as a deputy sheriff or other employee of the county for which he serves as constable.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

(6) Any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

(7) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

HISTORY:

Laws, 1983, ch. 469, § 3; Laws, 1988, ch. 546, § 4; Laws, 1992, ch. 530, § 10; Laws, 1994, ch. 586, § 1; Laws, 1998, ch. 490, § 1; Laws, 2000, ch. 578, § 2; Laws, 2008, ch. 562, § 13, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

Section 43-33-704 provides that the term "Mississippi Housing Finance Corporation" shall mean the "Mississippi Home Corporation."

The United States Attorney General, by letter dated July 1, 1994, interposed no objection, under Section 5 of the Voting Rights Act, to the amendment of this section by Laws, 1994, ch. 586, § 1.

The United States Attorney General, by letter dated February 6, 1995, interposed an objection, under Section 5 of the Voting Rights Act, to the amendment of this section by Laws, 1994, ch. 625, § 1; therefore, the amendment did not become effective.

The United States Attorney General, by letter dated August 21, 2000, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2000, ch. 578, § 2.

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 13.

Cross References —

Constitutional provision concerning public official contracts with the state or political subdivisions, see Miss. Const. Art. 4, § 109.

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Public officials not to derive income from issuance of bonds by Mississippi Home Corporation, see § 43-33-763.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Application of this section to the Mississippi Gaming Commission, see § 75-76-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general; definitions; construction of terms.
2. Hospital, health care.
3. Illustrative cases.

1. In general; definitions; construction of terms.

Step-son of asphalt company owner, who was also a governmental board member, bid on public construction project, and the step-son was awarded the project; the Mississippi Ethics Commission erred in determining that step-son was a relative because Miss. Code Ann. § 25-4-103(q) was plain, clear, and unambiguous, and "step-son" was not included in the statutory definition of relative. Miss. Ethics Comm'n v. Grisham, 957 So. 2d 997, 2007 Miss. LEXIS 328 (Miss. 2007).

Good faith and value are irrelevant when a public servant violates subsection (1). Hinds Community College Dist. v. Muse, 725 So. 2d 207, 1998 Miss. LEXIS 610 (Miss. 1998).

The court rejected the contention that the statute is a quasi-criminal statute that must be construed narrowly. Hinds Community College Dist. v. Muse, 725 So. 2d 207, 1998 Miss. LEXIS 610 (Miss. 1998).

The statute which governs nepotism, § 25-1-53, did not pre-empt the application of § 25-4-105 and to a situation in which the president of a community college employed his wife as a teacher since the former statute does apply to the employment of teachers. Hinds Community College Dist. v. Muse, 725 So. 2d 207, 1998 Miss. LEXIS 610 (Miss. 1998).

A public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he or she is associated is not considered a "member" of that entity as the term is applied in §§ 25-4-101 et seq of the Ethics in Government laws. Moore ex rel. Chickasaw County v. McCullough, 633 So. 2d 421, 1993 Miss. LEXIS 505 (Miss. 1993).

The assignment of a lease-purchase contract with a county to a business owned by the chancery clerk of the county board of supervisors did not violate § 25-4-105(3)(a), which prohibits a public servant from being a contractor, subcontractor or vendor with the governmental entity of which he or she is a member, since an assignment of a contract to a public servant's business does not violate the language of the statute, and the chancery clerk was not a "member" of a governmental entity but was merely an employee. Moore ex rel. Chickasaw County v. McCullough, 633 So. 2d 421, 1993 Miss. LEXIS 505 (Miss. 1993).

A judge's conduct warranted removal from office where he had utilized the criminal processes to collect fines and fees, had failed to properly account for said fines, and had converted them to his own use, thereby receiving pecuniary benefits. Mississippi Judicial Performance Com. v. Coleman, 553 So. 2d 513, 1989 Miss. LEXIS 477 (Miss. 1989).

Where portion of teacher salaries under teaching contracts comes from discretionary rather than mandatory local tax levies, teachers cannot validly contract with school district while on board of governing authority making such tax levies, or within one year after expiration of term on governing board, and it follows that insofar as § 25-4-105(3)(h) [repealed] attempts to make exception and authorize such contract it is unconstitutional and void under § 109 of Mississippi Constitution; individual serving as member of county board of supervisors which contracts with bank of which he is officer and stockholder violates § 109 of Mississippi Constitution and it follows that § 25-4-105(3)(a) authorizing such contract is unconstitutional and void; declaratory judgment to be without force and effect until January 1, 1988. Frazier v. State, 504 So. 2d 675, 1987 Miss. LEXIS 2394 (Miss. 1987).

Where portion of teacher salaries under teaching contacts comes from discretionary rather than mandatory local tax levies, teachers cannot validly contract with school district while on board of governing authority making such tax levies, or within one year after expiration of term on governing board, and it follows that insofar as § 25-4-105(3)(h) attempts to make exception and authorize such contract, it is unconstitutional and void under § 109 of Mississippi Constitution; individual serving as member of county board of supervisors which contracts with bank of which he is officer and stockholder violates § 109 of Mississippi Constitution and it follows that § 25-4-105(3)(a) authorizing such contract is unconstitutional and void. Frazier v. State, 504 So. 2d 675, 1987 Miss. LEXIS 2394 (Miss. 1987).

2. Hospital, health care.

Decision of the Mississippi Division of Medicaid (DOM) to award a fiscal agent contract to a service provider was supported by substantial evidence and was not arbitrary or capricious, where ethical issues regarding the provider's alleged improper hiring of DOM's former executive director, which allegedly gave the provider an illegal competitive advantage. Elec. Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So. 2d 1192, 2003 Miss. LEXIS 411 (Miss. 2003).

3. Illustrative cases.

A complaint against a city manager properly stated a cause of action for a violation of subsection (1) where it alleged that he used his official position to arrange urban development action grant loans for a dentist who leased a house from him, which loans were to be used to renovate and improve the property. Moore ex rel. City of Aberdeen v. Byars, 757 So. 2d 243, 2000 Miss. LEXIS 77 (Miss. 2000).

A complaint against a city manager properly stated a cause of action for a violation of subsection (5) where it alleged that he was privy to confidential information which he used to assist a dentist who leased a house from him in obtaining urban development action grant loans, which loans were to be used to renovate and improve the property. Moore ex rel. City of Aberdeen v. Byars, 757 So. 2d 243, 2000 Miss. LEXIS 77 (Miss. 2000).

ETHICS OPINIONS

ANALYSIS

I. IN GENERAL.

1. In general; definitions; construction of terms.
2-5. [Reserved for future use].

II. PARTICULAR PERSONS, MATTERS, AND CIRCUMSTANCES.

6. State legislators.
7. —Dual office, employment or position.
8. County supervisors.
9. Mayor, alderman, councilperson.
10. —Conflict involving family member.
11. Public agency or commission.
12. Public authority.
13. School, board of education.
14. Hospital, health care.
15. Judge, judicial employee.
16. Law enforcement.
17. —District attorney.
18. Attorney.
19. Other.

I. IN GENERAL.

1. In general; definitions; construction of terms.

The following characteristics serve as guidelines to distinguish between public office and public employment: (1) position should be prescribed by law; (2) position should have some specified term; (3) duties and powers of office should be defined or implied by law and should include authority to exercise some sovereign powers of state; (4) duties of office must concern public; and (5) holder of position should have power and authority to act in his or her own right. Op. of Miss. Ethics Comm. Op. No. 88-21-E.

Sister is not necessarily included in definition of "relative". Op. of Miss. Ethics Comm. Op. No. 90-098-E.

City and city school district are separate "authorities" under Code. Op. of Miss. Ethics Comm. Op. No. 92-025-E.

Chairmanship of state commission is "public office" where position is prescribed by law and has specified term, power and duties of position are defined by statute and include authority to exercise some sovereign power of state, and holder of position must take oath of office. Op. of Miss. Ethics Comm. Op. No. 92-068-E.

Whether legislator has "material financial interest" in a company which does business with state is dependent on totality of circumstances involved, for example value of ownership in corporation, percent of ownership, total income from corporation, position or positions held in it, legal responsibility, if any, to all stock holders and any conditions placed upon one's interest, divestiture of interest and to whom divestiture is made, compensation, abstention from voting on appropriation measures which fund any projects for which corporation may become subcontractor, conveyance of ownership into blind trust during his tenure in legislature and for one year afterwards, and related factors. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Commission has found that whenever Constitution Section 109 is violated, Code Section 25-4-105 subsection (2) is also violated. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Commission has applied the principle that any interest of one spouse accrues to the other spouse. Op. of Miss. Ethics Comm. Op. No. 91-111-E.

Members of the executive branch of a city may accept compensation for time, expenses, and travel for speaking to other cities, counties, and states on behalf of industries located within their city as long as no contract exists between the city and the industries involved. Even if a particular industry is a contractor, subcontractor, or vendor with the city, a violation would not exist unless the income paid to the city officer or employee constituted a "material financial interest" as defined in Section 25-4-103(k). Seeking to represent an industry for compensation would constitute a prohibited use of an official position. Recusal from matters affecting the industries represented was discussed. Op. of Miss. Ethics Comm. Op. No. 94-125-E.

Since the issuance of a permit or license by a municipal board does not constitute a government contract, a board member does not violate conflict of interest laws by voting in an action to approve a variance in zoning relating to a permit for a company, even though the member has a pecuniary interest in that company. However, the board member was cautioned not to use his official position to obtain pecuniary benefits for himself, and recusal from matters concerning his business was discussed. Op. of Miss. Ethics Comm. Op. No. 94-128-E.

A university faculty member contracting with his or her university to perform research and development for a dye that qualifies as an "intellectual property" as defined in Code Section 25-4-103(j) does not violate the conflict of interest laws because of the exception set forth in Code Section 25-4-105(4)(d). Op. of Miss. Ethics Comm. Op. No. 95-087-E.

The exception found in Section 25-4-105(4)(a) allows an officer of a bank serving as a municipality's depository to serve on the municipality's planning commission. The exception found in Section 25-4-105(4)(a) does not include a bank serving as a municipality's investment broker, paying agent, bond registrar, trustee and financial advisor. Op. of Miss. Ethics Comm. Op. No. 95-105-E.

The conflict of interest laws and the definitions under the conflict of interest laws do apply to members of an industrial board established by a joint resolution of a municipal board and a county board of supervisors. Op. of Miss. Ethics Comm. Op. No. 95-108-E.

An ambulance service which has the county coroner as an employee and/or a partner may not contract with the county because there are two or fewer ambulance services in the county. The exception set forth in the § 25-4-105(4)(d)(i) does not limit a good or service "reasonably available from two (2) or fewer commercial sources" to a specific geographical area such as a county. Op. of Miss. Ethics Comm. Op. No. 96-019-E.

County community hospital trustees may not promote and encourage other trustees to vote for a donation to a non-profit foundation they are officers and members of if the non-profit foundation is a business with which they are "associated" as it would violate § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-024-E.

An employee of a nonprofit consortium contracting with a state agency to implement a statewide computerized system is not a public servant under the conflict of interest laws when the nonprofit consortium was not given the authority to act for, or in the place of, the state agency. Op. of Miss. Ethics Comm. Op. No. 96-038-E.

A school district may expend federal program funds to provide optometrist services to qualified students when the optometrist providing the services is the spouse of the county superintendent of education because the exception found in § 25-4-105(4)(d)(i) prevents a violation of § 25-4-105(3)(a) since the optometrist services being provided are reasonably available from two (2) or fewer commercial sources. However, the school district was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-065-E.

The conflict of interest laws do not prohibit a city council member from resigning his position on the city council and immediately accepting the position of city municipal judge, as the municipal judge position is a "public office" and therefore not held by contract. Op. of Miss. Ethics Comm. Op. No. 97-003-E.

Section 25-4-105(3)(a) does not prohibit a state agency's employee from contracting to teach a course for a state university, as the exception set forth in § 25-4-105(4)(h) is applicable. Op. of Miss. Ethics Comm. Op. No. 97-068-E.

Different departments of a city will not be deemed separate authorities for purposes of the state conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

2-5. [Reserved for future use].

II. PARTICULAR PERSONS, MATTERS, AND CIRCUMSTANCES.

6. State legislators.

Insurance business, with which member of state legislature is associated, may not serve as agent for administrator of worker's compensation self-insurance pool for purpose of marketing worker's compensation self-insurance to county governments when county's authority to participate in pool was created by 1988 legislative act. Any agreement by county to participate in pool would constitute contract pursuant to section. Legislators/marketing insurance company agents would have interest in contracts as a result of their company consummating contracts and receiving benefits for such work. Op. of Miss. Ethics Comm. Op. No. 89-10-E.

Legislature may not lease real property to state agency; prohibition would not be removed by either use of irrevocable trust, transfer of property to corporation the sole stockholders of which are legislator's children or a trust, or transfer of property to a spouse who assumes indebtedness and transacts with government agent lessee. Op. of Miss. Ethics Comm. Op. No. 89-85-E.

Legislator may not contract with state commission to perform various duties related to fundraising and receive as payment percentage of funds raised as well as reimbursement for expenses incurred. Op. of Miss. Ethics Comm. Op. No. 90-118-E.

Law does not prohibit legislator/attorney from representing private clients in eminent domain matters brought about by Department of Economic Development, however legislator is cautioned that in serving as attorney for private clients there should be no use of his official position as set forth in subsection (1) of § 25-4-105. Op. of Miss. Ethics Comm. Op. No. 91-029-E.

Section prohibits legislator from selling land to state highway department, unless transfer is accomplished by eminent domain. Op. of Miss. Ethics Comm. Op. No. 91-033-E.

Section does not prohibit person from serving as chairman of large state commission within one year of being state legislator. Position of chairperson of state commission, in instance involved, is public office, therefore subject could accept appointment to such office without violating § 25-4-105 or Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 92-068-E.

It is conflict of interest for member of legislature to own more than 10 percent of a corporation which does subcontracting work on road construction projects funded, in part, by State Highway Department, because subcontract of legislator's firm would not exist without prime contract, thereby calling into play violation of Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

As to whether it is conflict of interest for member of Legislature to own more than 10 percent of corporation which operates as subcontractor on sanitary water and sewer projects for counties, districts, cities, or towns within state, each separate subcontract would have to be analyzed to determine under what specific legal authority their prime contracts were let and how each would be funded. Should any of potential subcontract emanate from general legislation or from general legislative funding during legislator's term or one year thereafter, there would be conflict violation. Whether legislator votes or does not vote is not controlling; Section 109 of Constitution prohibits interest in certain contracts, and voting on matter does not bring section into application, nor does refraining from voting prevent its application. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Legislator's ownership over 30 percent of one corporation and 15 percent of another corporation, each of which were subjects of trust in purchase/redemption agreements, which did subcontracting work on road project funded in part by state Highway Department, one of which was valued at over $500,000, the other over $2,000,000, constituted prohibited interest in such companies. Fact that legislator's interest was placed in blind trust did not remove prohibited interest, it merely assigned management of it for period of time to a trustee. Op. of Miss. Ethics Comm. Op. No. 92-086-E.

Ethics violation arises where state legislator becomes employed by local school district within one year of expiration of his term. Op. of Miss. Ethics Comm. Op. No. 92-095-E.

Law prohibits legislator from being employed as agent to sell individual health and group insurance policies by insurance company which is under contract with state. As agent selling individual health and group insurance policies, receipt of resulting commissions constitutes material financial interest on part of legislator and since material financial interest in insurance company on part of legislator is prohibited when that company is a contractor, subcontractor, or vendor with Legislature, insurance company may not contract with Legislature. Op. of Miss. Ethics Comm. Op. No. 92-119-E.

Attorney who is member of legislature may represent private clients before state agencies such as Mississippi Public Service Commission. However, should client be other than private client and take on form of governmental entity, determination of fact would have to be made in each case as to whether or not ethics laws would become applicable. Op. of Miss. Ethics Comm. Op. No. 92-183-E.

There is no prohibition against legislator being employed as attorney for and representing clients in gaming industry, although caution should be exercised so legislator does not use his official position for pecuniary benefit for himself or business with which he is associated; violation of statute may be avoided by complete recusal in matters which may benefit client. Op. of Miss. Ethics Comm. Op. No. 93-033-E.

Legislator may not become employed as consultant to home health agency, because of potential for agency to receive funds authorized by legislature. Op. of Miss. Ethics Comm. Op. No. 93-076-E.

Bank which employs legislator would be in violation if it purchased bonds or otherwise pursued business with state authorized by legislature during term of the legislator or for one year thereafter. Such business would not be a violation where it concerned bond issues authorized by legislature prior to the term of office of the legislator in question. Furthermore, violation might arise not only upon legislator's participation in legislative functions that involve matters singularly affecting the bank/employer, but may also arise upon participation in functions that involve competitor of the bank/employer, depending on facts involved. Op. of Miss. Ethics Comm. Op. No. 93-158-E.

A legislator is not prohibited from contracting with the highly state-regulated gaming industry or from conducting general insurance business with a casino, however, the legislator is prohibited from using his official position to benefit himself or his business and therefore, may not be able to influence or vote on issues relating to gambling. Op. of Miss. Ethics Comm. Op. No. 94-004-E.

A legislator is not prohibited from contracting with the highly state-regulated gaming industry or from conducting general insurance business with a casino, however, the legislator is prohibited from using his official position to benefit himself or his business and therefor, may not be able to influence or vote on issues relating to gambling. Also, a legislator may not sell insurance to private correctional institutions, as he would have a prohibited interest in contracts authorized by the Legislature, and that interest continues for his current term and one year thereafter. Op. of Miss. Ethics Comm. Op. No. 94-065-E.

A former legislator may not serve as a paid employee of the Governor's office within one year of the legislator's resignation when the salary is derived from funds authorized by the legislature of which he was a member. Op. of Miss. Ethics Comm. Op. No. 94-070-E.

A legislator/attorney may represent a client before a governmental entity other than the authority of the entity of which he is an officer or employee, under Section 25-4-105(4)(i). However, this provision does not apply as an exception to Constitutional Section 109. The contract for representation of a non-governmental client would not violate ethics laws, however, a settlement agreement in a contingency fee arrangement would constitute a contract and create a violation. Payment of a fixed sum or on an hourly basis would not create an interest in the contract and would not create a violation. Op. of Miss. Ethics Comm. Op. No. 94-072-E.

A member of the Mississippi Legislature may share office space and telephone lines with a registered lobbyist in the state of Mississippi. Op. of Miss. Ethics Comm. Op. No. 95-004-E.

A member of the Mississippi Legislature may own part of a business that is also owned in part by a person who is a registered lobbyist in the state of Mississippi. The Legislator must recuse himself/herself from voting on all action directly concerning a business with which he/she has a pecuniary interest. Op. of Miss. Ethics Comm. Op. No. 95-004-E.

A legislator may not accept an offer to purchase a cellular phone and cellular service from a state vendor at the vendor's state contract price. Op. of Miss. Ethics Comm. Op. No. 95-016-E.

A salaried associate for a law firm may serve in the state legislature when a partner/shareholder of the law firm is a registered lobbyist and is paid an annual flat fee by his lobbyist client which is placed into the law firm's funds to be distributed among the partners/shareholders, provided the legislator recuses himself from actions concerning legislation the partner/shareholder lobbied for or against on behalf of the lobbyist client. Op. of Miss. Ethics Comm. Op. No. 95-016-E.

A legislator/attorney's law partner's providing of legal representation to a state agency that receives money appropriated by the legislature results in a violation of Constitutional Section 109 even if the legislator/attorney does not share in the fees received by his law firm for that particular representation. Op. of Miss. Ethics Comm. Op. No. 95-051-E.

If the law partner of a legislator/attorney represents a client in such ways as drafting legislation which the client then tries to have introduced and passed by the legislature, the legislator/attorney may avoid a violation of Code Section 25-4-105 by completely recusing himself/herself as a legislator from any action or consideration of the particular piece of legislation which his law partner has drafted and not sharing in the fees generated from the representation by the attorney/legislator's partner (although this would not remove a potential violation of Constitutional Section 109). Op. of Miss. Ethics Comm. Op. No. 95-051-E.

A legislator's spouse may not sell office machinery to state agencies located within a specified territory assigned to the spouse by his or her employer. Op. of Miss. Ethics Comm. Op. No. 95-052-E.

The law firm of a legislator may not represent an insurance company's interest in defense of medical practitioners employed by a state institution when the insurance coverage is purchased by the state institution. Op. of Miss. Ethics Comm. Op. No. 95-053-E.

A newly elected legislator's law firm may not continue to accept any contracts entered into during his term or for one year thereafter with the Department of Transportation in eminent domain proceedings which would be in violation of Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-070-E.

A newly elected legislator's law firm may conclude pending litigation representing the Department of Transportation in eminent domain proceedings that were filed prior to the law partner/legislator's election. However, the legislator does have a prohibited interest in existing contracts should state funds be used to compensate the law firm appropriated by the Legislature during the legislator's term or within one year thereafter, which would violate Constitutional Section 109 and Code Section 25-4-105(2). A recusal will not prevent a violation. Op. of Miss. Ethics Comm. Op. No. 95-070-E.

A legislator within one year of the expiration of his term may not accept employment with a water management district which the legislature authorized spending for during the legislator's term as it would violate Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-123-E.

A community college may not compensate a state legislator for announcing over a public address system at its home athletic events as it is prohibited by Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-127-E.

A legislator within one year of the expiration of his term may not accept employment with a nonprofit foundation if the foundation receives appropriations or assessments for state educational institutions or if the foundation contracts with state educational institutions as both would result in a violation of Constitutional Section 109 and Code Section 25-4-105(2). The simple payment of legitimate dues does not constitute a contract. Op. of Miss. Ethics Comm. Op. No. 95-128-E.

A legislator may not accept employment with a county tourism commission if the tourism commission is funded by a state appropriation during the legislator's term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 96-027-E.

A former legislator can not be employed by a construction firm if the construction firm's state contracts were funded during the legislator's term or for one year thereafter as it would violate Constitutional Section 109 and § 25-4-105(2). The former legislator was also cautioned regarding § 25-4-105(3)(e) and (5). Op. of Miss. Ethics Comm. Op. No. 96-029-E.

A legislator may not serve concurrently as a corporate counsel/government relations specialist/registered lobbyist for a corporation if the corporation contracts with the State as to do so would violate Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 96-053-E.

A legislator may not serve concurrently as a corporate counsel/government relations specialist/registered lobbyist for a corporation as any action on his part to influence a decision of the Legislature of which he is a member would violate § §25-4-105(3)(d). The legislator was also cautioned regarding § 25-4-101 and § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-053-E.

A legislator may not be employed by a private company that sells health care equipment to individuals in their homes when approximately 10% of the company's sales are from Medicaid as to do so would violate Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 96-058-E.

A legislator's engineering firm's contract with a county through a joint venture is not prohibited if the state funds granted to the contract were appropriated by the Legislature prior to the beginning of the legislator's term. Op. of Miss. Ethics Comm. Op. No. 96-083-E.

A legislator does have a prohibited interest, under Constitutional Section 109 and § 25-4-105(2), in any of his engineering firm's existing contracts should any state funds granted to those projects be appropriated or reappropriated by the Legislature during the legislator's term, or within one year after the expiration of his term. Op. of Miss. Ethics Comm. Op. No. 96-083-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a state legislator from personally benefitting from a student loan or grant if the associated funds were authorized for expenditure or if there was a law passed authorizing the program by the Legislature during the member's term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 96-103-E.

A legislator's company may make sales directly to local governments and/or contractors of local governments provided the funds were not appropriated by the Legislature during the member's term or for one year thereafter and no general legislation giving the local governments authority to enter into the contracts was passed by the Legislature during the member's term or for one year thereafter. However, the legislator was cautioned regarding Constitutional Section 109 and § 25-4-105(1) and (2). Op. of Miss. Ethics Comm. Op. No. 96-118-E.

The conflict of interest laws would not as such prohibit a legislator, individually or as a partner, from participating in the Mississippi Small Business Assistance Program when the authorizing legislation, including the bonding authority, was passed by the Legislature prior to the legislator taking office. However, the legislator was cautioned regarding Constitutional Section 109, § 25-4-105(1) and (2), and § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-124-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a legislator's business from participating in a state loan program during his term and for one year thereafter when the statutory authority authorizing the state loan program was amended during the legislator's current term to extend the program's termination date and to increase the program's funding. Op. of Miss. Ethics Comm. Op. No. 97-133-E.

It is not a violation of the state conflict of interest laws for a state legislator to sell individual life, disability and medical supplement insurance to public employees on a payroll deduction plan through their place of work, including public employees of the state, universities and community colleges, school districts, counties and municipalities; however, there will be a violation of subsection (2) of this section if (1) the insurance contracts are with a state agency, a university, a community college or a school district, as these governmental entities are funded by appropriations bills authorized by the state legislature or (2) the state legislature passes legislation, during the legislator's term of office or within one year thereafter, that authorizes such payroll deductions for the employees of the state, universities and community colleges, school districts, counties and municipalities. Op. of Miss. Ethics Comm. Op. No. 97-151-E.

It is not a violation of the state conflict of interest laws for a state legislator to sell individual life, disability, and medical supplement insurance to employees or private businesses on a payroll deduction plan through their place of work, even though their employers may have interests in legislation before the state legislature; however, there will be a violation of subsection (2) of this section if the state legislature passes legislation, during the legislator's term of office, or within one year thereafter, that authorizes such payroll deductions for the employees of the private businesses. Op. of Miss. Ethics Comm. Op. No. 97-151-E.

Article IV, § 109 of the Constitution and subsection (2) of § 25-4-105 prohibit a state legislator from having an interest in any contract with a school district that is authorized by any law passed by the legislature during the state legislator's term or within one year thereafter and, therefore, a state legislator may not receive architectural/engineering fees for services performed for a school district even when those fees are not paid from state funds. Op. of Miss. Ethics. Comm. Op. No. 97-152-E.

Article IV, § 109 of the Constitution and § 25-4-105 do not prohibit a legislator's spouse from participating in the Mississippi Small Business Assistance Program where the authorizing legislation, including the bonding authority, was passed by the legislature prior to the legislator's current term of office. Op. of Miss. Ethics. Comm. Op. No. 97-159-E.

A member of the Mississippi Legislature may not participate with a group that contracts with a regional correctional facility, jointly operated by certain counties, to provide collect telephone call services to inmates when the Mississippi Department of Corrections is contracting with these counties' boards of supervisors to house state inmates during the member's term. Op. of Miss. Ethics Comm. Op. No. 98-024-E.

A legislator's spouse may participate in the Mississippi Small Business Assistance Program through a planning and development district where the authorizing legislation, including the bonding authority, was passed by the legislature prior to the state legislator's current term of office. Op. of Miss. Ethics Comm. Op. No. 98-031-E.

A convenience store owned by a legislator may sell gasoline to a planning and development district. Op. of Miss. Ethics Comm. Op. No. 98-034-E.

If a current member of the state legislature serves as legal counsel for an individual or entity whose primary work is serving as a registered lobbyist, then the legislator will be required to recuse himself from any matter before the legislature or its committees that would provide a pecuniary benefit to the lobbying business. Op. of Miss. Ethics Comm. Op. No. 98-040-E.

Article IV, § 109 of the Constitution and § 25-4-105(2) do not prohibit a state agency from employing a legislator's spouse as a time-limited, non-state service employee; however, the legislator will be required to recuse himself from matters before the legislature and its committees that would provide a pecuniary benefit to his spouse. Op. of Miss. Ethics Comm. Op. No. 98-041-E.

A state legislator, who is also an attorney, may file suit on behalf of a client against the state, its agencies or employees involving coverage by the Mississippi Tort Claims Board; and there would be no violation should a court of competent jurisdiction award a judgment, including attorney fees, in favor of the state legislator/attorney's client; however, a state legislator/attorney is prohibited from receiving attorney fees, directly or indirectly, through a settlement agreement in such cases involving the Mississippi Tort Claims Board on behalf of his or her client. Op. of Miss. Ethics Comm. Op. No. 98-053-E.

A legislator's convenience store may sell fuel through Fuelman to a county when the county is making the fuel purchases with monies from its general fund and/or road and bridge fund. Op. of Miss. Ethics Comm. Op. No. 98-056-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a legislator from contracting with a Head Start agency if the Head Start agency receives funds, directly or indirectly, through an appropriation from the legislature during the legislator's term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 98-063-E.

A legislator may attend an out-of-state seminar and facility tour at a national corporation's plant when the legislator's expenses will be paid for by the national corporation. Op. of Miss. Ethics Comm. Op. No. 98-075-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a state legislator from serving as a board member of or owning stock in a corporation that receives funding from a state agency when the agency's funding to the corporation is authorized by an appropriation bill passed during the legislator's term or within one year thereafter. Op. of Miss. Ethics Comm. Op. No. 98-078-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a state legislator from having a consultant contract with a county human resource agency for a county Head Start program when such program is partially funded by the Department of Human Services, TANF Child Care program, with funds that are appropriated by the legislature during the legislator's term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 98-101-E.

It is not a violation of the state conflict of interest laws for a legislator to serve as an emergency management director, E-911 director and county fire coordinator; however should any of the legislator's local appointed positions be funded by appropriations from the legislature, he would be in violation of Article IV, Section 109 of the Constitution and subsection (2) of this section. Op. of Miss. Ethics Comm. Op. No. 98-102-E.

A state legislator is not allowed to be the agent for group insurance policies for individual life and disability coverage to public employees on a payroll deduction plan where there is a requirement of a contract between the public entities and the insurance carrier. Op. of Miss. Ethics Comm. Op. No. 98-108-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section do not prohibit a county from contracting with a legislator when the county is funding its contracts with the legislator with monies from its general fund and/or road and bridge fund; however, if the legislature provides direct or indirect appropriations, during the legislator's term or one year thereafter, then the legislator's contracts with the county would be in violation of Article IV, Section 109 of the Constitution and subsection (2) of this section. Op. of Miss. Ethics Comm. Op. No. 98-111-E.

A legislator may not do business with a school district located in the legislator's district since the state legislature appropriates funds to state school districts and the Supreme Court has ruled that the appropriation of funds is part of the contract authorization process. Op. of Miss. Ethics Comm. Op. No. 98-111-E.

A state commission may employ the spouse of a legislator as a certified court reporter; however, the legislator will be required to recuse himself from matters before the legislature and its committees that would provide a pecuniary benefit to his spouse as the commission's employee. Op. of Miss. Ethics Comm. Op. No. 98-132-E.

A state employee elected to the state legislature must resign his employment before taking the oath of office as a member of the legislature. Op. of Miss. Ethics Comm. Op. No. 99-001-E.

A legislator may contract with a county human resource agency to provide consulting services for a county Head Start Program operated by the agency when the agency receives some funding through appropriations from the state legislature, including funding for the Head Start Program, but the funds from which the legislator is paid are received directly from the federal government; however, the legislator should recuse himself from any and all matters coming before the legislature, or its committees, that concern the entity receiving the state legislative appropriated funds and the state agency programs providing the funding to the entity. Op. of Miss. Ethics Comm. Op. No. 99-014-E.

A state legislator is not prohibited from contracting as a consultant to provide training and technical assistance with a governmental entity, such as a county human resource agency, or a not-profit 501(3)(c) corporation, when the local grantee is funded entirely with federal funds received directly from the federal government. Op. of Miss. Ethics Comm. Op. No. 99-022-E.

Subsection (3)(a) prohibits a state legislator from providing consulting services to a Head Start Program if the contract is with a nonprofit corporation, if the nonprofit corporation has a grant or contract with a state agency, and if the consulting contract results in an aggregate annual net income of $5,000.00, or more, to the legislator. Op. of Miss. Ethics Comm. Op. No. 99-022-E.

A public school principal/legislator will violate Article IV, Section 109 of the Constitution and subsection (2) of this section upon entering into a contract with the school district for the school year in which the appropriation bill passed during the public school principal/legislator's first session applies; however, the public school principal/legislator may complete the school year covered by his or her existing contract without violating Article IV, Section 109 of the Constitution and subsection (2) of this section. Op. of Miss. Ethics Comm. Op. No. 99-037-E.

The employment contract of a legislator's spouse with a Medicaid service provider, does not violate Article IV, Section 109 of the Constitution and subsection (2) of this section. Op. of Miss. Ethics Comm. Op. No. 99-038-E.

A public school teacher, if elected to the State Legislature, will be in violation of Constitutional Section 109 and subsection (2) of this section upon entering into a contract with a public school district for the school year that the appropriation bill passed during his or her first legislative session applies; in other words, a teacher elected to the State Legislature may complete the school year covered by his or her existing contract, but may not continue in that position or as a substitute teacher on a part-time basis after being elected to the State Legislature. Op. of Miss. Ethics Comm. Op. No. 99-045-E.

Constitutional Section 109 and subsection (2) of this section do not prohibit a legislator's spouse from being employed as a public school teacher. Op. of Miss. Ethics Comm. Op. No. 99-045-E.

A newly elected legislator may continue to receive the commissions he earned prior to his election as a commercial real estate broker for leases he brokered with state agencies for and on behalf of private property owners when he receives the commissions directly from the private property owner by way of an arrangement whereby the commissions are paid over time, such as monthly or annually; however, the newly elected legislator may not receive such commissions for future lease periods that are funded by a legislature of which he is a member and by a legislature within one year of his leaving office. Op. of Miss. Ethics Comm. Op. No. 99-060-E.

A newly elected legislator is prohibited from continuing to work with a state agency involving the sale of land or a building when the legislator began working with the state agency prior to his election and when the state agency received its appropriation in the prior Legislative Session to purchase the property and the legislator's sales commission will be paid by the eventual property owner/seller unless the service being provided is only one of two available commercial sources available or if the service being provided is by way of a contract let to the lowest and best bidder after a competitive bidding where at least three legitimate bids were received. Op. of Miss. Ethics Comm. Op. No. 99-060-E.

A newly elected legislator may continue to represent a private corporation as its brokering agent in the private corporation's leasing and eventual selling of a building to a state agency when the legislator originally showed the property to the state agency prior to his election and when the state agency's funding to lease the building was appropriated in the prior Legislative Session; however, the newly elected legislator may not receive commissions that are funded by a legislature of which he is a member and by a legislature within one year of his leaving office. Op. of Miss. Ethics Comm. Op. No. 99-060-E.

A newly elected legislator must advise state entities that he is prohibited from leasing space in properties he manages once he becomes a member of the legislature. Op. of Miss. Ethics Comm. Op. No. 99-060-E.

It is not a violation of the state conflict of interest laws for state legislators to serve as board members of a nonprofit organization that is funded solely with federal grant monies when the federal government distributes the federal grant monies directly to the nonprofit organization; however, a nonprofit organization may not be the recipient of a grant funded by federal, state or other monies that are appropriated by the legislature when legislators are serving as board members of the nonprofit organization. Op. of Miss. Ethics Comm. Op. No. 99-069-E.

A state legislator's company may not continue to manage an office building owned by a state corporation that is established by state law as a governmental instrumentality when the state legislator's company managed the building prior to the state legislator's election. Op. of Miss. Ethics Comm. Op. No. 99-072-E.

It is not a violation of the state conflict of interest laws for a state legislator to serve on the board of trustees of a private medical center, unless the medical center receives funds appropriated by the legislature of which the legislator is a member. Op. of Miss. Ethics Comm. Op. No. 99-073-E.

It is not, as such a violation of the state conflict of interest laws for a legislator to be employed by a casino; however, in order to be certain to avoid any action in his official capacity as a legislator that would result in a pecuniary benefit to his casino employer, the legislator would be required to totally and completely recuse himself from any action that concerned the gaming industry. Op. of Miss. Ethics. Comm. Op. No. 99-114-E.

It is not as such a violation of the state conflict of interest laws for a state legislator's father to carry a casino key gaming license; however, in order to be certain to avoid any action in his official capacity as a legislator that would result in a pecuniary benefit to his father, the legislator would be required to totally and completely recuse himself from any action that concerned the gaming industry. Op. of Miss. Ethics. Comm. Op. No. 99-114-E.

The medical practice of the spouse of a legislator cannot have a Medicaid agreement with the state and receive Medicaid payments by way of a Medicaid agreement when the Medicaid payments will be funded through an appropriation bill passed by the legislature during the legislator's term or for one year thereafter, and a recusal or abstention by the legislator would not alter this result. Op. of Miss. Ethics. Comm. Op. No. 99-128-E.

A former state legislator within one year of his last term in the legislature cannot contract with a state university to serve as a facilitator of a lecture series where the former legislator is to paid by the foundation established to support the state university. Op. of Miss. Ethics. Comm. Op. No. 00-010-E.

A legislator or a legislator's business is prohibited from conducting workshops for community college or public school district personnel on location at the schools or at some other location and being paid by the community colleges or public school districts, and this prohibition will apply while the legislator is a member of the legislature that appropriated funds to these community colleges or public school districts, and for one year after the termination of the legislator's term of office. Op. of Miss. Ethics. Comm. Op. No. 00-081-E.

A legislator or a legislator's business is prohibited from contracting with a community college through the college's skill tech center or workforce development office to teach personnel and personal development classes on location at businesses and factories, and this prohibition will apply while the legislator is a member of the legislature that appropriated funds to the respective community colleges or public school districts, and for one year after the termination of the legislator's term of office. Op. of Miss. Ethics. Comm. Op. No. 00-081-E.

A legislator may not be paid by a community college or any other governmental entity funded by the legislature for the participation of the community college's employee or other governmental entity's employee in open-to-the-public classes conducted by the legislator or the legislator's business at chambers of commerce or other such venues, and this prohibition will apply while the legislator is a member of the legislature that appropriated funds to the respective community colleges or public school districts and, for one year after the termination of the legislator's term of office. Op. of Miss. Ethics. Comm. Op. No. 00-081-E.

A legislator's spouse could not be employed by a county board of supervisors at the request of the county judge as a youth court victim/witness coordinator where the victim/witness coordinator position was partially funded by a grant from a state department that was appropriated by the legislature during the legislator/spouse's term or for one year thereafter unless the large class rule set forth by the State Supreme Court was applicable. Op. of Miss. Ethics. Comm. Op. No. 01-024-E.

A legislator can be employed by a county as director of the county's office of planning and development, but must totally and completely recuse himself from any and all matters coming before the legislature or its committees that concern his county employer, and matters that concern planning, building, housing, and development that he is involved with as the county's director of office of planning and development. Op. of Miss. Ethics. Comm. Op. No. 01-057-E.

The state conflict of interest laws do not as such prohibit a state legislator from serving as a member of a county tourism commission when the compensation paid the state legislator as a tourism commission member is derived totally by local taxation of lodging and restaurant establishments. Op. of Miss. Ethics. Comm. Op. No. 01-127-E.

A legislator's spouse who is employed by a medical center may accept an appointment by a county board of supervisors to a regional mental health commission as such a position is a public office and not a position held by contract. Op. of Miss. Ethics. Comm. Op. No. 02-008-E.

It is not as such a violation of the conflict of interest laws for an individual to serve simultaneously as an elected municipal board member and as a state legislator. Op. of Miss. Ethics. Comm. Op. No. 02-026-E.

A legislator may not do business with a state governmental entity, but may do business with a county governmental entity if the county funds its contracts with the legislator's business with monies from its general fund and/or road and bridge fund. Op. of Miss. Ethics. Comm. Op. No. 02-063-E.

An individual may simultaneously hold political office as a city board member and a state legislator. Op. of Miss. Ethics. Comm. Op. No. 02-063-E.

Where a business receives an infrastructure construction grant from a state board, and the grant's funding has been approved by the Legislature, a legislator and/or the legislator's law firm may be the business's attorney of record for projects completely unrelated to the approval of and/or funding received from the state grant, i.e., the business's infrastructure construction. Op. of Miss. Ethics Comm. Op. No. 02-089-E.

7. —Dual office, employment or position.

State senator could accept appointment as Executive Director of Mississippi Employment Security Commission without violating § 25-4-105 or Constitution § 109. Op. of Miss. Ethics Comm. Op. No. 88-21-E.

Legislator may simultaneously serve as adjunct professor at Mississippi university where such service would be without compensation or expense reimbursement. Op. of Miss. Ethics Comm. Op. No. 88-185-E.

Newly elected legislator may not have simultaneous employment with a state commission. Legislator would be in violation immediately upon being sworn into office where he is employed by state agency or commission. Commission recommends that legislator-elect resign from state employment prior to being sworn in to Legislature. Op. of Miss. Ethics Comm. Op. No. 91-140-E.

A state legislator may be employed by a planning and development district only if the district does not have any contracts with state agencies and does not receive payments by way of funds authorized by the state legislature. The district is also prohibited from contracting with local governing authorities which receive legislatively authorized grants from state agencies. Op. of Miss. Ethics Comm. Op. No. 94-114-E.

A county road employee elected constable cannot serve in both positions without violating § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 95-031-E.

A constable's spouse serving as a deputy justice court clerk does not in and of itself violate the conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 95-031-E.

An individual elected to the office of constable may not continue to work as a deputy sheriff for the county he or she was elected to serve as constable. Op. of Miss. Ethics Comm. Op. No. 95-121-E.

The conflict of interest laws do not prohibit an alderman from serving as chancery clerk. However, there may be problems under the Separation of Powers Doctrine so the requestor was referred to the Attorney General. Op. of Miss. Ethics Comm. Op. No. 95-138-E.

An individual elected coroner may not serve as a deputy sheriff for the county he serves as coroner since to do so would violate § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 96-003-E.

A legal secretary for the municipal board attorney may not remain in that employment position if she is elected to the board of aldermen because there would be a violation Constitutional Section 109 and § 25-4-105(2) and (3)(a). Op. of Miss. Ethics Comm. Op. No. 96-008-E.

An alderman may be employed as the county fire coordinator if there are no contracts existing between the municipality and the county that would cause the alderman to violate Constitutional Section 109 and § 25-4-105(2) as a compensated county employee. However, the alderman was cautioned regarding § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-009-E.

An employee of a municipality's airport authority may simultaneously serve as the chairman of the municipality's planning committee because the airport authority is a separate authority of the municipality (See § 25-4-105(4)(h)). However, the employee was cautioned regarding § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-014-E.

An alderman may not be employed as the compensated county fire coordinator if there are contracts existing between the municipality and the county, especially a fire protection contract, that would cause the alderman to violate Constitutional Section 109 and § 25-4-105(2) as a compensated county employee. Op. of Miss. Ethics Comm. Op. No. 96-016-E.

A county deputy sheriff may be appointed town marshal of a municipality located within the county employing the deputy sheriff. However, the deputy sheriff was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-017-E.

The county's circuit clerk may not simultaneously serve as the county's justice court clerk as it would violate § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 96-023-E.

A legislator may not accept employment with a county tourism commission if the tourism commission is funded by a state appropriation during the legislator's term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 96-027-E.

A county election commissioner may simultaneously serve as a member of the county's planning commission. However, the commissioner was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-030-E.

A county election commissioner may simultaneously serve as a circuit court bailiff. However, the commissioner was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-033-E.

A deputy circuit clerk performing election duties such as operating voting machines may not be elected to the county election commission and remain as a deputy circuit clerk performing election duties as it violates § 25-4-105(3)(a). A county election commissioner performing election duties such as operating voting machines for primary elections conducted by party executive committees is contrary to the policy set forth in § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-035-E.

The state conflict of interest laws do not prohibit a state employee from serving a political party as an executive board member, secretary to the executive board, as a delegate to the county, congressional district and state conventions and as vice-chair of the county's women's political party organization. Op. of Miss. Ethics Comm. Op. No. 96-042-E.

Section 25-4-105(3)(a) prohibits a municipality from contracting with its employee, either as an independent contractor or in another distinct employment position, but the municipality may assign employees appropriate duties of their employment position for any department of the municipality. Op. of Miss. Ethics Comm. Op. No. 96-044-E.

An assistant jail administrator may simultaneously hold the position of arson investigator since state statute requires that the arson investigator be a member of the sheriff's department. Op. of Miss. Ethics Comm. Op. No. 96-061-E.

An alderman may be employed as a principal of the school district for the municipality he was elected to serve although he voted to appoint or reappoint three of the current trustees of the school district. However, the alderman was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-071-E.

Section 25-4-105(3)(a) prohibits a county's duel employment of an individual as a county requisition clerk and as a county veteran's officer. However, the individual's service as the uncompensated human resource agency director and as a member of a regional solid waste authority is not prohibited. The individual was also cautioned regarding § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-087-E.

An individual may simultaneously serve as a county election commissioner and as a principal of a public school. However, the individual was cautioned regarding § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-108-E.

Section 25-4-105(4)(h) allows full-time employees of a state agency to be employed part-time as security guards by a state facility, as the state agency and state facility are separate authorities of state government. Op. of Miss. Ethics Comm. Op. No. 97-001-E.

Constitutional Section 109 and Code Section 25-4-105(2) prohibit a board member of a state department from accepting employment with a local community center that is primarily funded by the state department. Op. of Miss. Ethics Comm. Op. No. 97-013-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county engineer from serving in the State Legislature if the county engineer is paid fees for completing engineering services on state aid projects that are authorized by an appropriation bill passed by the Legislature during the county engineer's legislative term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 97-017-E.

A governmental entity's contracting with or funding of a non-profit community development/housing development corporation is prohibited by Constitutional Section 109 and § 25-4-105(2) when that governmental entity's board member serves as the non-profit's director. Op. of Miss. Ethics Comm. Op. No. 97-028-E.

Constitutional Section 109 and § 25-4-105(2) prohibit an alderman from serving as the fire chief of a volunteer fire department that is receiving funding, services, equipment and/or facilities from the alderman's municipality. Op. of Miss. Ethics Comm. Op. No. 97-134-E.

Constitutional Section 109 and § 25-4-105(2) prohibit an employee of a governmental commission from serving in the Legislature when the commission's enabling legislation requires that the commission's funding be appropriated by the Legislature. Op. of Miss. Ethics Comm. Op. No. 97-135-E.

An employee of one state governmental entity is prohibited from being a contractor, subcontractor or vendor with the state unless (1) the employee desires to be a contractor or vendor with another state governmental authority other than his employing state governmental authority and his contract will not be one that places him in an employee status with the other state governmental authority, or (2) the employee is employed and/or compensated by his state governmental authority to provide the assistance in the areas of personnel management, structure and recruitment and either a W4 form or a W9 form will be required to be filed. Op. of Miss. Ethics Comm. Op. No. 99-098-E.

A legislator cannot serve as the executive director of a nonprofit corporation that has as its purpose the raising of money for the advancement of a community college. Op. of Miss. Ethics. Comm. Op. No. 99-119-E.

A state legislator could not serve as a member of the boards of directors of two nonprofit corporations as one was directly receiving and the second was by affiliation with the first indirectly receiving funds appropriated by the legislature. Op. of Miss. Ethics. Comm. Op. No. 00-070-E.

A legislator can be employed by and receive compensation from a 501-C-3 not-for-profit corporation when such compensation is paid from a federal grant that comes directly to the corporation from the United States Department of Education; however, if the corporation also receives funding through the state legislative appropriation process, a legislator can be so employed and compensated only if the state legislative appropriated funds cannot be legally commingled with the federal funds, the local grantee maintains detailed accounting records of all its funds, and the payments to the legislator are not only from funds not appropriated by the legislature, but also from funds that may not be supplanted by state legislative appropriated funds. Op. of Miss. Ethics. Comm. Op. No. 00-086-E.

A legislator is not prohibited from being employed by a waste management company contracting with counties and cities when such contracts are not authorized by a law passed or funding appropriated by the legislature; however, the legislator would be required to totally and completely recuse himself from any action that concerned the waste management industry. Op. of Miss. Ethics. Comm. Op. No. 00-088-E.

A state legislator is not prohibited from being employed by a Mississippi nonprofit corporation because he is a legislator where the Mississippi nonprofit corporation does not receive direct or indirect funding through legislative appropriations and has no contracts authorized by the Legislature; however, the legislator would be required to totally and completely recuse himself from any and all matters coming before the Legislature, or its committees, that concerned the nonprofit corporation. Op. of Miss. Ethics. Comm. Op. No. 00-126-E.

A deputy chancery clerk is prohibited by § 25-4-105(3)(a) from simultaneously holding a part-time position with the same county's sheriff department/correctional facility as the chancery clerk's office and the sheriff's department are considered to be within the same county authority for the purposes of the conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 02-050-E.

8. County supervisors.

Section prohibits county from contracting with company that employs spouse of one of the county's supervisors. Spouse's salary constitutes prohibited interest on part of supervisor in any contract with spouse's employer. Op. of Miss. Ethics Comm. Op. No. 91-137-E.

Section prohibits county supervisor from becoming employed by county tourism board or commission at expiration of his term of office, where such tourism board or commission is formed as result of state, local and private legislation and implemented by board of supervisors. Op. of Miss. Ethics Comm. Op. No. 92-010-E.

Law prohibits corporation in which material financial interest exists on the part of a county supervisor, from contracting with regional mental health authority. Op. of Miss. Ethics Comm. Op. No. 92-031-E.

Ethics violation arises where county contracts with electric company owned by person whose father is member of board of supervisors who rents building to son. Op. of Miss. Ethics Comm. Op. No. 92-075-E.

Ethics in Government law may be violated should supervisor and his immediate family serve as teachers in same county. If supervisor or "relative", meaning spouse, child, or parent, became teacher in city school system, no per se violation of ethics law would occur; city school system is separate authority from that of county. Should supervisor or "relative" become employed by county school system, where all of local funding portion or of salaries under teaching contract comes from mandatory local tax levies, again no violation would occur. Where portion of salary derived by public school teacher under teaching contract or that of a "relative" comes from discretionary local tax levies, such teaching contract would violate Section 109 of state Constitution and Code Section 24-4-105, subsection (2), while teacher is member of board of governing authority which makes such tax levies or within one year after term on governing board expires. Op. of Miss. Ethics Comm. Op. No. 92-103-E.

Law does not prohibit business owned by county supervisor from contracting with cities and towns within county, provided no county funds are used by entities in payment pursuant to a purchase; such purchase was not a consequence of town or city's compliance with requirement of county brought about by actions of board of which supervisor was a member, or within one year thereafter; and supervisor has not used official position for pecuniary benefit from self or his business in violation of Code. Ethics laws would not prohibit supervisor from doing business with other counties and cities within state or with the state. Op. of Miss. Ethics Comm. Op. No. 92-123-E.

Law prohibits county from contracting with bank as depository when one of supervisors received $6,600 per year as advisory member of bank. Op. of Miss. Ethics Comm. Op. No. 92-146-E.

Member of county board of supervisors simultaneously employed by county hospital of same county would have prohibited interest in contract authorized by the board of which he is a member. Provisions would be violated should described circumstances exist subsequent to start of new budget cycle, whereas prior to such start of budget cycle no violation would occur since employment in question had been authorized prior to the supervisor's taking office. Same principles would apply to any new contracts authorized between hospital and board of supervisors or as to any such items requiring action on part of board, such as hospital's budget, contracts which include payment to hospital for services or of interest to all employees of hospital, as their sustenance is in part derived from such contract. Only complete recusal on part of supervisor in all board deliberations and voting as to matters involving hospital, including appointment of its trustees, will avoid violation as to code subsection (1), but recusal removes only the vote, and not the prohibited interest subject to constitutional Section 109 and code § 25-4-105(2). (Commission also recommended that office of Attorney General be contacted as to applicability of Constitutional separation of powers doctrine as Commission lacks authority to interpret that provision.) Op. of Miss. Ethics Comm. Op. No. 92-231-E.

Violation would occur should person be elected county supervisor and thereafter become affiliated with law firm which contracts with insurance company to represent certain county entities and public officials in same and other counties. Violation would not exist if law firm did not represent any of county personnel or entities of county or if supervisor chose not to affiliate with law firm. Neither recusal nor abstention prevents potential violation; while vote may be removed, prohibited interest in contract authorized by board lingers. Op. of Miss. Ethics Comm. Op. No. 93-216-E.

A county supervisor who is a general partner of a limited partnership may contract privately with towns within the county if the contracts are not authorized by the board of supervisors and the board is not a party to the contracts. If the supervisor has an interest in a contract authorized by his board, there is a violation of ethics laws will occur, and even recusal does not remove the prohibited interest. Op. of Miss. Ethics Comm. Op. No. 94-058-E.

A person elected to the county board of supervisors may not serve in that capacity when the supervisor-elect is the lessor and the county is the lessee under a ten-year real property lease now in its fifth year. Op. of Miss. Ethics Comm. Op. No. 95-018-E.

It is a violation of Constitutional Section 109 and § 25-4-105(2) for the spouse, parent or child of a county supervisor to be employed by an authority of the county government. Op. of Miss. Ethics Comm. Op. No. 95-057-E.

Members of the county board of supervisors and municipal governing boards may compose the board of a nonprofit corporation acting as an economic development foundation when their public entities are funding the foundation if they are not compensated as foundation board members nor have personal pecuniary interests in contracts with the foundation. Op. of Miss. Ethics Comm. Op. No. 95-081-E.

A county supervisor-elect's roofing company may contract with other public entities other than the supervisor-elect's county if the county is not appropriating funds to the other public entities or their projects. It violates Constitutional Section 109 and Code Section 25-4-105(2) for the supervisor-elect's company to contract with the supervisor-elect's county. Op. of Miss. Ethics Comm. Op. No. 95-088-E.

A county supervisor may serve on an economic development board and an industrial development board when the supervisor's county funds both development entities without being in violation of Constitutional Section 109 and Code Section 25-4-105(2) if the supervisor is uncompensated for such service. Op. of Miss. Ethics Comm. Op. No. 95-094-E.

A county supervisor may not be employed by a consulting firm that is presently contracting with the supervisor's county, but the supervisor may contract with other governmental entities, including other counties, to help establish a self-help housing program through a federal grant when the supervisor's county has a similar grant. Op. of Miss. Ethics Comm. Op. No. 95-096-E.

A county board of supervisors may not lease a building to house a local library when the building is owned by a member of the county library advisory board of trustees. Op. of Miss. Ethics Comm. Op. No. 95-120-E.

A county supervisor employed by a corporation within one year of the end of the supervisor's term of office is in violation of Constitutional Section 109 and § 25-4-105(2) if the corporation has existing contracts with the county or contracts with the county during the one year following the end of the supervisor's term of office. Op. of Miss. Ethics Op. No. 96-039-E.

A corporation solely owned by four stockholders of the corporation employing the supervisor within one year of the end of the supervisor's term of office may contract with the county if the corporation employing the supervisor is not its subcontractor or the corporation employing the supervisor is not providing materials to the corporation that can reasonably be expected to become a part of the contract with the county. Op. of Miss. Ethics Op. No. 96-039-E.

A supervisor's county may do business with the supervisor's brother's company as a brother is not a relative under the conflict of interest laws' definition set forth in § 25-4-103(q). However, the county was cautioned regarding § 25-4-101. Op. of Miss. Ethics Op. No. 96-039-E.

A company may employ a former supervisor within one year of his term even though a company with the same owners and address contracts with the county provided the former supervisor has no other direct or indirect interest in the company contracting with the county. Op. of Miss. Ethics Comm. Op. No. 96-039-ER.

A company that employed a former supervisor within one year of his term may be paid by the county for past due invoices if the former supervisor severs his employment with the company. Op. of Miss. Ethics Comm. Op. No. 96-039-ER.

A person appointed to fill only an interim term on the county board of supervisors may not return to his previous employment position with the county district that he was serving as supervisor when the interim term is over within one year thereafter as to do so would violate Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 96-049-E.

A person appointed to fill only an interim term on the county board of supervisors may not return to his previous employment position with the county district that he was serving as supervisor when the interim term is over even though he abstained from any vote concerning the budget of the county. Op. of Miss. Ethics Comm. Op. No. 96-049-E.

A retail awards company solely owned by a county supervisor may sell trophies and other award items to the county school district. However, the company was cautioned regarding § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-066-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county supervisor's pharmacy from providing medication to the community hospital owned by the county he serves. Op. of Miss. Ethics Comm. Op. No. 96-097-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county supervisor from serving as the city manager for a municipality that has existing interlocal agreements with the county under which the municipality pays the county to provide police, fire, street, drainage and recreation services. The supervisor was also cautioned regarding § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-110-E.

Article IV, § 109 of the Constitution and subsection (2) of § 25-4-105 absolutely prohibit the county board of supervisors from authorizing a contract that provides assistance, directly or indirectly, to an industry when one of the supervisors has an ownership interest in the industry; this prohibition applies during the supervisor's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 97-142-E.

Constitutional Section 109 and Code Section 25-4-105(2) prohibit county supervisors from having an interest in any sixteenth section lease contracts with the county school district when the lease contracts' rental amounts are approved by the county board of supervisors during the members' terms or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 97-148-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county supervisor's company from contracting with a regional mental retardation commission during the county supervisor's term or for one year thereafter when the county board of supervisors authorize funding to support the regional mental retardation commission by way of a discretionary tax levy. Op. of Miss. Ethics Comm. Op. No. 97-163-E.

A county administrator may serve as an advisory board member of a bank and own stock in the bank, even though the bank does business with the county, as long as the administrator owns less than 2 percent of the bank and his income from the bank remains under the $5,000.00 aggregate annual net income threshold. Op. of Miss. Ethics Comm. Op. No. 98-002-E.

The parent of a county supervisor may receive financial assistance for homeowner rehabilitation through a grant for the Home Investment Partnerships Program that was awarded to the county board of supervisors unless the supervisor is interested, directly or indirectly, in the parent's receipt of the financial assistance for her homeowners' rehabilitation and so long as the supervisor totally and completely recuses himself from any aspect of the grant/application process. Op. of Miss. Ethics Comm. Op. No. 98-015-E.

A county supervisor is not prohibited from serving as a member of a nonprofit corporation or from having an interest in a for-profit corporation that is involved in receiving federal or state loans or grants to fund housing projects; this is also true if the county supervisor is the executive director of a nonprofit corporation receiving federal or state loans or grants to fund housing projects. Op. of Miss. Ethics Comm. Op. No. 98-022-E.

A county supervisor's child may not be employed by the county's chancery clerk or the county's circuit clerk if the county supervisor's child is financially dependent on the county supervisor and if the employment position or its funding is authorized by the board of supervisors. Op. of Miss. Ethics Comm. Op. No. 98-025-E.

A county supervisor may not vote on an application by a corporation for an ad valorem tax exemption before the board of supervisors when the county supervisor is employed by the corporation with a salary in excess of $1,000. Op. of Miss. Ethics Comm. Op. No. 98-028-E.

A public school teacher may simultaneously serve as a county supervisor if he recuses himself from all matters coming before the county board of supervisors that concern his school district employer. Op. of Miss. Ethics Comm. Op. No. 98-068-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a county from paying a county supervisor a value-per-acre amount to acquire his property for right-of-way and to rebuild his fencing destroyed in the construction unless ordered to do so by a court of competent jurisdiction in an eminent domain proceeding. Op. of Miss. Ethics Comm. Op. No. 98-070-E.

A contract entered into between a county board of supervisors and a company in which a county port commissioner has a material financial interest is prohibited and therefore subject to being declared void by the county board of supervisors. Op. of Miss. Ethics Comm. Op. No. 98-093-E.

A county supervisor, through his plumbing business, may not install sewer lines for homeowners from their homes to a new sewer line being installed by one of the county's waste water districts whose members are appointed by the board of supervisors if the waste water district's ability to construct the new sewer line was in effect authorized in part by a discretionary action of the board of supervisors. Op. of Miss. Ethics Comm. Op. No. 98-107-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section are not violated when a county board of supervisors appoints one of its member's daughters to the board of commissioners of the local body corporate and politic, even if the supervisor has an interest in his daughter's appointment, since the position on the board of commissioners is not held by contract. Op. of Miss. Ethics Comm. Op. No. 98-110-E.

It is not a violation of the state conflict of interest laws for an individual who owns one-third of an insurance group to serve as a member of the county board of supervisors when another individual who also has a one-third interest in the insurance group contracts to provide insurance to the county through an insurance company that is totally separate and apart from the insurance group. Op. of Miss. Ethics Comm. Op. No. 98-112-E.

It is not a violation of the state conflict of interest laws for a county supervisor's business to contract with a county other than the county the supervisor is elected to serve. Op. of Miss. Ethics Comm. Op. No. 98-128-E.

A public school principal may serve as a member of the board of supervisors when his employing school district is located within the county he will serve as a supervisor; however, the principal must recuse himself from all matters coming before the county board of supervisors that concern his school district employer. Op. of Miss. Ethics Comm. Op. No. 98-138-E.

The state conflict of interest laws do not prohibit an individual's simultaneous service as an employee of a state university and as a county supervisor; however, he should totally and completely recuse himself from any matter coming before the county board of supervisors concerning the state university. Op. of Miss. Ethics Comm. Op. No. 99-002-E.

It is not a violation of the conflict of interest laws for a city public works superintendent to simultaneously serve as a county supervisor when the employing city is located within the county he will serve since a city and a county are separate governmental entities; however, he will be required to recuse himself from all matters coming before the county board of supervisors that concern his city employer. Op. of Miss. Ethics Comm. Op. No. 99-008-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section will absolutely prohibit an employee of county-owned hospital from continuing his employment, or from contracting in any other way, with the county-owned hospital if he is elected to the county board of supervisors after the board of supervisors approves its first budget submitted by the county-owned hospital. Op. of Miss. Ethics Comm. Op. No. 99-011-E.

A county supervisor may be employed by a community college funded by his or her county through a tax levy only if the current funding of the particular community college by the county board of supervisors is in a mandatory state by statute. Op. of Miss. Ethics Comm. Op. No. 99-018-E.

A county supervisor's business is not prohibited from contracting with a city because the city is a separate governmental entity from the county; however, Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a county supervisor from having an interest, whether direct or indirect, in a contract with the state, or any district, county, city or town thereof, authorized by the supervisor's board during his term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 99-029-E.

The state conflict of interest laws do not prohibit a county supervisor from serving as a member of a nonprofit corporation or from having an interest in a for-profit corporation that is involved in receiving federal or state loans or grants to fund housing projects; this is also true if the county supervisor is the executive director of a nonprofit corporation receiving federal or state loans or grants to fund housing projects. Op. of Miss. Ethics Comm. Op. No. 99-033-E.

The spouse of a candidate for the board of supervisors may not remain employed by the county soil and water conservation commission if the candidate is elected to the board of supervisors when a portion of the spouse's salary is paid by the board of supervisors through an agreement between the USDA-NRCS and the board of supervisors. Op. of Miss. Ethics Comm. Op. No. 99-058-E.

A local governmental entity's board member, including a county supervisor, a municipal board member and/or a school board trustee, is absolutely prohibited from contracting with his or her governmental entity or the board member's business contracting with his or her governmental entity during the board member's term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 99-067-E.

A county supervisor's business is not as such prohibited from contracting with a city because the city is a separate governmental entity from the county. Op. of Miss. Ethics Comm. Op. No. 99-075-E.

A county supervisor's business was prohibited from contracting with a city when the city was receiving discretionary gaming monies from the county board of supervisors and when the county and the city had numerous interlocal agreements currently in effect between them. Op. of Miss. Ethics Comm. Op. No. 99-075-E.

It is not as such a violation of the state conflict of interest laws for an individual employed by the Mississippi Department of Education as a school attendance officer to serve as a county supervisor or a member of a county school board of trustees. Op. of Miss. Ethics Comm. Op. No. 99-083-E.

The state conflict of interest laws do not as such prohibit a board member of a nonprofit rural water association from serving as a county supervisor. Op. of Miss. Ethics Comm. Op. No. 99-087-E.

A county may not contract with a supervisor's child to provide architectural services to the county if the supervisor is directly or indirectly interested in the child's contract. Op. of Miss. Ethics Comm. Op. No. 99-100-E.

The employment of a county supervisor's financially dependent child in the county tax assessor's office is prohibited. Op. of Miss. Ethics. Comm. Op. No. 99-115E.

A company could maintain an existing sixteenth section land lease where the principal owner of the company had been elected to serve on the county board of supervisors as the company's authorization by the county board of supervisors was not during the owner's term or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 99-126-E.

A county supervisor cannot nominate his spouse to a county planning commission if the planning commission members are to receive per diem and/or expense reimbursements; the county supervisor would be required to totally and completely recuse himself from the consideration of his spouse's appointment to the commission. Op. of Miss. Ethics. Comm. Op. No. 00-001-E.

A county supervisor is prohibited from having an employment contract with the county sheriff's department during his term of office and is also prohibited from having an employment contract with the county sheriff's department within one year of the end of his term of office. Op. of Miss. Ethics. Comm. Op. No. 00-002-E.

A former county supervisor can be employed by a municipal police department located within the county he served within one year of the end of his term, unless there exists a contract between the county and the city in which the former county supervisor, as a salaried police officer, would have a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 00-002-E.

A county cannot enter into a contract with an ambulance service that employs the son of one of the county supervisors where the son resides with the county supervisor, and a recusal or abstention by the county supervisor will not alter the result. Op. of Miss. Ethics. Comm. Op. No. 00-012-E.

A former county supervisor/planning and development district board member was prohibited from being employed by the planning and development district to perform landfill operation services under the planning and development district's contract with the solid waste authority for one full year after the former county supervisor/planning and development district board member's term ended. Op. of Miss. Ethics. Comm. Op. No. 00-013-E.

The spouse of a newly elected supervisor cannot remain employed by the county as a road employee in a beat other than the beat of the newly elected supervisor when the county operates under the beat system of road administration as a violation of the statute will occur once the newly elected supervisor's spouse is paid with funds approved in a budget authorized by the county board of supervisors of which the newly elected supervisor is a member, and an abstention or recusal by the supervisor will not prevent the violation. Op. of Miss. Ethics. Comm. Op. No. 00-015-E.

A county cannot continue as a member of a nonprofit opportunity agency, and thereby continue to fund the nonprofit opportunity agency when a newly elected supervisor's spouse is employed by the nonprofit opportunity agency as a violation of the section will occur when the county board of supervisors either authorizes a new membership agreement with the nonprofit opportunity agency employing the newly elected supervisor's spouse during the newly elected supervisor's term of office or within one year thereafter, or grants funding the nonprofit opportunity agency employing the newly elected supervisor's spouse from monies approved in a budget authorized by the county board of supervisors during the newly elected supervisor's term of office or within one year thereafter, and an abstention or recusal by the supervisor will not prevent the violation. Op. of Miss. Ethics. Comm. Op. No. 00-016-E.

A county supervisor is prohibited from contracting as a consultant with Keep Mississippi Beautiful, Inc. to assist it in implementing its programs if the county in which the supervisor serves also contracts with Keep Mississippi Beautiful, Inc. to implement its state-wide communication programs. Op. of Miss. Ethics. Comm. Op. No. 00-017-E.

A county board of supervisors is prohibited from obtaining a block grant from the state for use as an economic development loan to a corporation whose president and part owner is the spouse of a former county supervisor whose term on the board of supervisors expired within one year of the obtaining of the grant and/or the providing of the loan. Op. of Miss. Ethics. Comm. Op. No. 00-022-E.

The spouse of a newly elected member of the county board of supervisors cannot remain employed as a registered nurse by the community hospital owned by the county after the county board of supervisors of which he is a member approves its first budget, submitted by the county-owned hospital, and an abstention or a recusal will not prevent a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-023-E.

A county board of supervisors' employment of the county's chancery clerk to look after the interest of the county in lands the county owned as anticipated in Code Section 19-7-15 would result in a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-027-E.

A county board of supervisors can simultaneously employ two spouses, one as the purchasing clerk, the other as a beat road foreman, if neither is a relative of the members of the board of supervisors and neither has supervisory power over the other; however, each spouse is prohibited from using these official positions for pecuniary benefit to themselves or each other. Op. of Miss. Ethics. Comm. Op. No. 00-030-E.

A county supervisor's child can be employed by the county board of supervisors in the position of a combined coordinator with the duties of the E-911 director, the emergency management director, and the fire coordinator if the child is totally and completely financially independent from the supervisor and the supervisor has no interest, direct or indirect, in the child's employment contract with the county; however, the supervisor would be required to recuse himself from any action coming before the board of supervisors in connection with the child's original employment and any action that would increase his child's compensation or fringe benefits as an employee of the county or would result in a promotion or re-employment. Op. of Miss. Ethics. Comm. Op. No. 00-033-E.

A waterway district was not prohibited from contracting with a county supervisor's corporation in the event the waterway district's board determined the county supervisor's corporation had submitted the lowest and best bid for the construction of 20 cabins, as the state bond issue and its monies to fund the contract to build the 20 cabins were independent and separate from the waterway district's normal indebtedness/liabilities, contracts, and county funding; however, such a contract would be prohibited if the waterway district were to fund the contract project with monies derived from the counties' payments or with monies supplanting monies derived from the counties' payments, or if the waterway district were to fund the contract project with borrowed monies or bond monies the indebtedness and/or liabilities of which would be paid for with monies derived from the counties' payments; further the county supervisor would be required to recuse himself from any matter coming before the board of supervisors that concerned the waterway district, an appointment to the waterway district board, and/or the county's funding of the waterway district during the existence of the construction contract in the event the waterway district board awarded the contract to the supervisor's corporation. Op. of Miss. Ethics. Comm. Op. No. 00-037-E.

A deputy circuit clerk's contractual relationship with the county board of supervisors to perform county law library updates would result in the deputy circuit clerk being a contractor with the authority of the governmental entity in which the deputy circuit clerk was a public servant in violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-039-E.

A newly elected supervisor's spouse is prohibited from continuing her employment, or from contracting in any other way with county-owned hospital after the county board of supervisors of which he is a member approves its first budget submitted by the county-owned hospital, and a recusal or abstention by the supervisor will not prevent a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-042-E.

A newly elected county supervisor's spouse could not remain employed by a corporation that leased a county-owned hospital after the board of supervisors entered into a new lease contract for the county hospital with the corporation. Op. of Miss. Ethics. Comm. Op. No. 00-049-E.

The statute does not prohibit an individual from serving as a county supervisor while simultaneously being an employee of a state agency; however, this is with the understanding that a state employee serving as a supervisor may not perform the duties and responsibilities of supervisor when on duty with the state and being paid by the state, i.e., a state employee serving as a supervisor must request and receive leave from the state agency when performing his or her duties and responsibilities as a supervisor. Op. of Miss. Ethics. Comm. Op. No. 00-068-E.

A county supervisor's daughter-in-law cannot be employed by the county tax assessor/collector's office if the county supervisor's son and daughter-in-law are financially dependent on the county supervisor and/or if the county supervisor is interested, directly or indirectly, in the daughter-in-law's county employment contract. Op. of Miss. Ethics. Comm. Op. No. 00-135-E.

It is not a violation of the state conflict of interest laws for one spouse to serve as an elected member of a county board of supervisors and the other spouse to serve as an elected member of the board of aldermen for a city located within the county the other spouse serves as a supervisor. Op. of Miss. Ethics. Comm. Op. No. 01-003-E.

A county supervisor could participate in the discussions and votes pertaining to an ambulance contract if the supervisor's son totally and completely severed all employment interest and/or other interests with the ambulance company, the son would not be receiving any pecuniary benefits of any kind from the ambulance company, and the supervisor would not otherwise be interested, directly or indirectly, in the ambulance contract if authorized by the board. Op. of Miss. Ethics. Comm. Op. No. 01-004-E.

A county board of supervisors is prohibited from contracting with the spouse of one of its members by employing the spouse as computer support personnel, and this prohibition will apply during the supervisor's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-030-E.

A community mental health center is prohibited from contracting with a construction company owned by a county supervisor who is a member of one of the boards of supervisors that appropriates funding to the community mental health center, and this prohibition will apply during the supervisor's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-032-E.

A county board of supervisors is prohibited from authorizing the purchase of one of its members' property and/or approving the funds to purchase one of its members' property for any purpose, including expanding the existing industrial park at the recommendation of the county economic development foundation. Op. of Miss. Ethics. Comm. Op. No. 01-038-E.

A county supervisor is prohibited from being employed by a community college funded by the county supervisor's board during the county supervisor's term and for one year thereafter, when any funding provided by the county to the community college during the supervisor's term is nondiscretionary. Op. of Miss. Ethics. Comm. Op. No. 01-089-E.

A board of supervisors may not authorize a contract with a bank to serve as its depository, or for other purposes, when the bank employs one of the county supervisor's spouses. Op. of Miss. Ethics. Comm. Op. No. 02-010-E.

A city's superintendent of its solid waste department, who also serves as commissioner for the regional solid waste authority, may not simultaneously serve as a member of the county board of supervisors if the city, county, and regional solid waste authority have an interlocal agreement to operate and maintain a solid waste transfer station. Op. of Miss. Ethics. Comm. Op. No. 02-012-E.

A county supervisor, who is also a licensed auctioneer, may not conduct an auction to sell county surplus property, even if he does not charge the county a fee. Op. of Miss. Ethics. Comm. Op. No. 02-022-E.

The conflict of interest laws do not prohibit one spouse from seeking a position on the board of supervisors in an election while the other spouse simultaneously seeks the position of tax assessor/collector for the same county in the same election; further, if elected, they may hold such positions simultaneously. Op. of Miss. Ethics. Comm. Op. No. 02-036-E.

A member of a county board of supervisors, who serves on the board of a planning and development district, may vote to hire the district to perform duties for the county. Op. of Miss. Ethics. Comm. Op. No. 02-043-E.

The county board of supervisors may appoint the spouse of a county coroner to complete the unexpired term of the coroner following the retirement of the coroner. Op. of Miss. Ethics. Comm. Op. No. 02-044-E.

A regional mental health center may not enter into a contract with a security company owned by a county supervisor when the board of supervisors, on which the supervisor serves, appropriates funding and leases property to the regional mental health center, and this prohibition will apply during the supervisor's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 02-071-E.

A county supervisor may be employed by a community college funded by his or her county through a tax levy only if the current funding of that community college by the county board of supervisors is a maximum mandatory amount set by statute and the levy cannot be reduced from the previous year, so that funding discretion is removed from the county board of supervisors. Op. of Miss. Ethics Comm. Op. No. 02-072-E.

A county supervisor will not violate §§ 25-4-105(3)(a) or 25-4-105(3)(b), should he or his business contract with or sell goods or services to, or make purchases from, a community college because the county and community college are separate governmental entities as defined by § 25-4-103(g)(h). Op. of Miss. Ethics Comm. Op. No. 02-072-E.

The only way a county supervisor can be certain to avoid violating § 25-4-105(1) is to recuse himself from all matters coming before the county board of supervisors that concern a community college employing the requestor or contracting with the requestor by way of his business. Op. of Miss. Ethics Comm. Op. No. 02-072-E.

Because a county supervisor is prohibited by Miss. Const. Art. 4, § 109 and § 25-4-105(2) from directly or indirectly having an inherent interest and/or receiving a pecuniary benefit from his county or a community college as a result of any contracts existing between the two governmental entities, a recusal or an abstention will not prevent a violation since, even without a board member's vote, the authorization by the member's board nonetheless results in a contract in which the board member has a prohibited interest. Op. of Miss. Ethics Comm. Op. No. 02-072-E.

County board of supervisors is not prohibited from assigning to the comptroller of a county additional job duties and responsibilities, including those of maintaining the records for the county's fire commission, or setting the comptroller's compensation for performing those duties. Op. of Miss. Ethics Comm. Op. No. 02-098-E.

9. Mayor, alderman, councilperson.

Alderman may not, during ice storm subsequently proclaimed to be state-wide emergency, contract on behalf of city with private business owned and operated by employee of city to remove trees, tree limbs, etc., posing danger to public and interruption of utility service, notwithstanding emergency status. Op. of Miss. Ethics Comm. Op. No. 89-78-E.

City may not purchase goods or services from county co-op when chairman of board of co-op is city employee and bookkeeper of co-op is city alderman. Op. of Miss. Ethics Comm. Op. No. 89-159-E.

Alderman may not cast vote in such manner as to result in benefit to a business with which he is associated, thus motion before board of aldermen resulting in conditional use permit being granted to oil company employing an alderman would constitute conflict. Op. of Miss. Ethics Comm. Op. No. 90-066-E.

Alderman may not sell goods to contractor who is to be paid from proceeds of a community development block grant awarded to the city in which he is alderman; any agreement entered into city which predicates receipt of block grant constitutes contract pursuant to section, and alderman would be interested in contract, for without it there would be no purchase of building supplies. Op. of Miss. Ethics Comm. Op. No. 91-035-E.

It would be violation for alderman or councilman to become general manager or employee of non-profit service company owned by 2 other non-profit corporations which contract with their city. In addition, alderman or councilman would be subcontractor with governmental entity of which he or she is a member and thus have "material financial interest" in any business which is a contractor, subcontractor, or vendor with the governmental entity of which he or she is member, in violation of this section. Op. of Miss. Ethics Comm. Op. No. 91-062-E.

Violation exists where alderman owns approximately four tenths of one percent of stock of a corporation, such stock valued at $20,000, where corporation is expected to contract with city and to receive Community Development Block Grant initiated by city. Prohibited interest on part of alderman can be removed only by his divesting himself of investment. Recusal, "no" vote or abstention from voting does not remove prohibited interest. Op. of Miss. Ethics Comm. Op. No. 92-040-E.

City councilman is in violation of ethics laws if he does business with gaming operation which is lessee of city and also votes on matters coming before council which concern gaming operation. Op. of Miss. Ethics Comm. Op. No. 92-186-E.

It is not improper for alderman to participate in board deliberations and votes concerning dockside gambling when casino corporation is negotiating with both city and yacht club of which alderman is a member and in which alderman owns form of indebtedness, where alderman and his spouse purchased, in 1982, a $1,000 construction bearer bond of yacht club, which approximately in November, 1992 was transferred to a person not a "relative" and also in November, 1992 alderman's membership in yacht club was removed, and alderman did not have boat at yacht club nor current affiliation with it. Op. of Miss. Ethics Comm. Op. No. 92-206-E.

Ethics laws do not prohibit city councilman from simultaneously being employee of state commission. Op. of Miss. Ethics Comm. Op. No. 93-022-E.

Where citizens seeking to qualify for office of town alderman also is plaintiff in federal lawsuit against town, any settlement of suit may be effectuated and any agreed-to liability against city may be paid, prior to alderman candidate's taking office; however should alderman candidate take office first, then any settlement would in effect be precluded; settlement would be contract and new alderman would have an interest in it which would be authorized by the board of which he is a member, in violation of code and state constitution. However, legal fees may be paid to city attorney with respect to action since attorney's contract to represent city in action was entered into prior to alderman candidate's taking office. This holds true whether payment of fees is effected before or after alderman takes office. Finally, should court determine liability against city or order city to pay plaintiff's legal costs, city may pay amounts regardless of whether or not alderman takes office. Op. of Miss. Ethics Comm. Op. No. 93-035-E.

There would be no violation of subsection (1) of the section were city councilman to vote on zoning matter concerning land adjacent to him which vote would not result in pecuniary benefit to him. Op. of Miss. Ethics Comm. Op. No. 93-066-E.

Law prohibits attorney from becoming city attorney of a town whose mayor is attorney's secretary. Op. of Miss. Ethics Comm. Op. No. 93-130-E.

Ethics laws prohibit mayor and alderman from serving on city's chamber of commerce. Discretion of city governing body and its action in setting aside, appropriating, or expending funds to chamber so that chamber can provide its services to city constitutes at least an implied contract between two entities. Such contract would be illegal, with affected board member and board as a whole being liable. Mayor and alderman may, however, be members of chamber, as opposed to members of its board of directors. Op. of Miss. Ethics Comm. Op. No. 93-219-E.

Law does not prohibit city employees such as city clerk from serving on city's chamber of commerce. Not being members of city's governing board, no conflict would arise. However, should they become compensated members of chamber's board of directors in future, such should be brought to attention of Commission as it could constitute violation of ethics law. Op. of Miss. Ethics Comm. Op. No. 93-219-E.

The mayor of a charter city whose position in not full-time is not prohibited under the ethics laws from serving simultaneously as the county administrator for the same county. Op. of Miss. Ethics Comm. Op. No. 94-038-E.

The mayor of a city may lease his privately owned land located outside the city to a gaming corporation without violating ethics laws, but future contracts between the city and the gaming corporation, or solicitation of funding for infrastructure, could cause a violation or a sense of impropriety. Op. of Miss. Ethics Comm. Op. No. 94-059-E.

A former alderman who resigned to become employed as a town policeman has an interest in the contract, authorized by his board, to adopt the budget from which the salary is paid, and therefore is prohibited from such employment for his current term or within one year after the termination of the term. Op. of Miss. Ethics Comm. Op. No. 94-096-E.

A municipality operating under a code charter form of government may not approve additional compensation at an hourly rate for its salaried mayor for assisting with the duties of and the training of a new city clerk. Op. of Miss. Ethics Comm. Op. No. 95-006-E.

A mayor may serve as an uncompensated member of a volunteer fire department. Op. of Miss. Ethics Comm. Op. No. 95-050-E.

Where only two cellular telephone companies are available to contract with a municipality, contracting with an alderman's company does not violate Code Section 25-4-105(3)(a) because of the exception in Code Section 25-4-105(4)(d), but it does violate Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-086-E.

Where only two cellular telephone companies are available to contract with a municipality, contracting with a company that is an agent of one of the cellular telephone companies when there are other agents available and when a police officer has a material financial interest in the agent company violates Code Section 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 95-086-E.

A municipality funding a nonprofit trust for historical and cultural preservation purposes when an alderman serves on the trust's board is not as such a violation of the conflict of interest laws as there are only competing public interests. There would be a violation of the conflict of interest laws if the trust compensated the alderman or the alderman received personal pecuniary benefits from contracts with the trust. Op. of Miss. Ethics Comm. Op. No. 95-098-E.

An alderman is not prohibited by the conflict of interest laws from voting on matters concerning an employee that charged the alderman with harassment. Op. of Miss. Ethics Comm. Op. No. 95-112-E.

A municipal council member's serving as a board member of a nonprofit rehabilitation center that is funded by the council member's municipality is prohibited by Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-125-E.

A candidate for the municipal governing board may not serve if elected when he is the general manager of a cable television company that has an existing non-exclusive franchise agreement with the municipality. Op. of Miss. Ethics Comm. Op. No. 95-155-E.

An alderman may vote on the issuance of building permits and the amount to be charged for building permits when the alderman and/or his professional association has builders and developers as clients. However, the alderman was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-001-E.

A legal secretary for the municipal board attorney may not remain in that employment position if she is elected to the board of aldermen because there would be a violation of Constitutional Section 109 and § 25-4-105(2) and (3)(a). Op. of Miss. Ethics Comm. Op. No. 96-008-E.

An alderman may be employed as the county fire coordinator if there are no contracts existing between the municipality and the county that would cause the alderman to violate Constitutional Section 109 and § 25-4-105(2) as a compensated county employee. However, the alderman was cautioned regarding § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-009-E.

An alderman may not be employed as the compensated county fire coordinator if there are contracts existing between the municipality and the county, especially a fire protection contract, that would cause the alderman to violate Constitutional Section 109 and § 25-4-105(2) as a compensated county employee. Op. of Miss. Ethics Comm. Op. No. 96-016-E.

An alderman may not use his personal dump truck to haul materials for a contractor with the alderman's municipality as it would violate Constitutional Section 109 and § 25-4-105(2) and(3)(a). Op. of Miss. Ethics Comm. Op. No. 96-022-E.

A municipality's mayor's wrecker service may respond to a request from the municipality to provide wrecker services when all wrecker charges are paid by the vehicle owner and not the municipality. However, the mayor was cautioned regarding § 25-4-101 and § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-043-E.

Constitutional Section 109 and § 25-4-105(2) prohibit an alderman from having an interest, through a building lease, in an engineering firm that contracts with the municipality. Op. of Miss. Ethics Comm. Op. No. 96-082-E.

Section 25-4-105(2) and (3)(a) prohibits an employee of a cable television company from serving as an alderman for the municipality when the cable television company has a non-exclusive franchise agreement with the municipality. Op. of Miss. Ethics Comm. Op. No. 96-090-E.

Constitutional Section 109 and § 25-4-105(2) effectively prohibit a city's collection of fees for and on behalf of a rural volunteer fire department under an implied contract with the city when the chief of the volunteer fire department is also an alderman for the city. Op. of Miss. Ethics Comm. Op. No. 96-123-E.

An alderman's pharmacy's acceptance of payments from the municipality's Workers' Compensation insurance carrier on behalf of the municipality's employees is an interest in the municipality's Workers' Compensation insurance contract that is prohibited by Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 97-092-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a city from renewing a property lease contract with the city's newly elected mayor and the mayor's spouse. Op. of Miss. Ethics Comm. Op. No. 97-096-E.

Article IV, § 109 of the Mississippi Constitution and subsection (2) of § 25-4-105 absolutely prohibit an alderman from being employed by a library system that is partially funded by the alderman's municipality. Op. of Miss. Ethics. Comm. Op. No. 97-139-E.

An alderman who is also a member of a community college's faculty should recuse himself from any matter coming before the municipal governing authority that involves his community college employer in order to avoid an appearance of impropriety and to avoid using his official position to obtain a pecuniary benefit for himself. Op. of Miss. Ethics Comm. Op. No. 97-144-E.

Constitutional Section 109 and Code Section 25-4-105(2) prohibit county supervisors from having an interest in any sixteenth section lease contracts with the county school district when the lease contracts' rental amounts are approved by the county board of supervisors during the members' terms or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 97-148-E.

Article IV, § 109 of the Constitution and subsection (2) of § 25-4-105 prohibit an alderman from being employed by a business when his or her city contracts with that business during the alderman's term of office or for one year thereafter, and the prohibition includes the city contracting to purchase real property from the business employing the alderman. Op. of Miss. Ethics. Comm. Op. No. 97-157-E.

Article IV, § 109 of the Constitution and subsection (2) of § 25-4-105 prohibit the city's employment of an alderman's son-in-law if the alderman is directly or indirectly interested in the son-in-law's employment. Op. of Miss. Ethics. Comm. Op. No. 97-161-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county supervisor's company from contracting with a regional mental retardation commission during the county supervisor's term or for one year thereafter when the county board of supervisors authorize funding to support the regional mental retardation commission by way of a discretionary tax levy. Op. of Miss. Ethics Comm. Op. No. 97-163-E.

A city council member is prevented from having an interest in any bank serving as the city's depositories or contracting with the city for any other purpose; certainly, stock ownership or having a bank's equities and opportunities are such prohibited interests unless those interests are "de minimis non curet lex." Op. of Miss. Ethics Comm. Op. No. 98-008-E.

An alderman or an alderman's businesses may not have consultant and/or construction contracts and/or a percentage of ownership in utilities with a company when the company may be contracting with the alderman's city to purchase the city's utility operation should the city privatize its utility operation. Op. of Miss. Ethics Comm. Op. No. 98-009-E.

The mayor and board of aldermen, are prohibited from entering into a lease modification agreement or a new lease agreement with an industry that employs two aldermen during the two aldermen's terms of office and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 98-012-E.

A municipality may enter into a lease modification agreement and/or in the future enter into a new lease agreement with an industry that employed the municipality's mayor at the time of his election where the mayor subsequently retired from the industry, unless he has a continuing interest in the industry such as retirement payments. Op. of Miss. Ethics Comm. Op. No. 98-012-E.

A municipal council member, who is an employee of the municipal school district, is always advised to totally and completely recuse himself or herself from matters involving the appointment of municipal school board members. Op. of Miss. Ethics Comm. Op. No. 98-013-E.

An alderman who has been issued a beer license by the municipality may not serve on an advisory committee to make recommendations to the mayor and board of aldermen with regard to changes or amendments to the municipality's beer ordinance or participate in the board of aldermen's actions on the amendment of the municipality's beer ordinance. Op. of Miss. Ethics Comm. Op. No. 98-014-E.

It is not a violation of the state conflict of interest laws for an alderman to simultaneously serve as a board member of a private nonprofit water association. Op. of Miss. Ethics Comm. Op. No. 98-021-E.

A municipal council member, who is an employee of the municipal separate school district, must always totally and completely recuse himself or herself from matters involving the appointment of members to the municipal separate school board of trustees in order to comply with the public policy set forth in § 25-4-101 and to avoid a potential violation of subsection (1) of this section. Op. of Miss. Ethics Comm. Op. No. 98-023-E.

A city council member may not be employed as a sales person for an automobile dealership when the dealership is providing repair services, repair parts and warranty services to the city. Op. of Miss. Ethics Comm. Op. No. 98-033-E.

It is not a violation of the state conflict of interest laws for a mayoral spouse to be employed by the municipality's housing authority, as long as the housing authority receives no funding of any kind or no additional bond issuing authority from the mayor and aldermen; however, a mayor, whose spouse is an employee of the municipality's housing authority, should totally and completely recuse himself or herself from matters involving the appointment of housing authority members. Op. of Miss. Ethics Comm. Op. No. 98-035-E.

The donation of real property to the city by a former alderman will not violate the state conflict of interest laws, even if the donation occurs within one year of the former alderman leaving office. Op. of Miss. Ethics Comm. Op. No. 98-046-E.

A municipal alderman, who is also a bail bondsman, is prohibited from writing bail bonds for the release of defendants arrested and held in custody by the municipality that he serves; however, a municipal alderman, who is also a bail bondsman, may write bail bonds for the release of defendants held in custody by governmental entities other than the municipality that he serves. Op. of Miss. Ethics Comm. Op. No. 98-047-E.

An alderman may not serve as an executive board member of a union when the union has an employment contract with the alderman's city whereby the city's employees who are union members are employed, promoted and disciplined. Op. of Miss. Ethics Comm. Op. No. 98-058-E.

A city council member may be employed by the county as a bookkeeper/comptroller. Op. of Miss. Ethics Comm. Op. No. 98-060-E.

After purchasing a private water system, a code charter municipality may only continue a contract with the mayor's son-in-law to provide meter reading services that he was previously providing to the private water service if the mayor is totally and completely financially independent from his son-in-law and daughter and has no interest, direct or indirect, in the son-in-law's contract with the city and if the mayor is not in any way involved in the board of aldermen's decision to continue the contract of his son-in-law as a meter reader. Op. of Miss. Ethics Comm. Op. No. 98-061-E.

A limited liability corporation, in which a city council member owns a substantial interest, may not lease a building to a company that has an existing contract with the city. Op. of Miss. Ethics Comm. Op. No. 98-076-E.

A city council member may not lease land and/or buildings to a company that has a service contract with the city and that owns a majority of another company that contracts with the city. Op. of Miss. Ethics Comm. Op. No. 98-077-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a mayor from serving as the chairman of a broad-based, not-for-profit group during his current term and for one year thereafter where the city has funded the group during his current term; further, Article IV, Section 109 of the Constitution and subsection (2) of this section will prohibit the city from funding the group during the mayor's term and for one year thereafter should the mayor serve as the group's chairman. Op. of Miss. Ethics Comm. Op. No. 98-082-E.

It is not a violation of the conflict of interest laws for a city council member to vote on the dedication of a street that has been requested by a business partner of the city council member, if the city council member does not have a personal interest in and will not personally receive a pecuniary benefit from the city council's approval of the street dedication. Op. of Miss. Ethics Comm. Op. No. 98-084-E.

It is not a violation of the conflict of interest laws for a city council member to vote on leasing space to house a city department in a mini-mall partly owned by a business partner of the city council member if the city council member does not have an interest, direct or indirect, in and will not personally receive a pecuniary benefit from the city's lease with the mini-mall. Op. of Miss. Ethics Comm. Op. No. 98-084-E.

It is not a violation of the conflict of interest laws for the city to lease space to house a city department in a mini-mall partly owned by the mayor's father-in-law if the mayor does not have an interest, direct or indirect, in and will not personally receive a pecuniary benefit from the city's contract with the mini-mall partly owned by the mayor's father-in-law. Op. of Miss. Ethics Comm. Op. No. 98-084-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section absolutely prohibit an alderman from selling land to the town during his term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 98-085-E.

An alderman may not remain a member of his union when the union has an employment contract with the alderman's city, whereby the city's union employees are employed, promoted and disciplined; the alderman's resignation as an executive board member of the union will remove his fiduciary interest and therefore the prohibition imposed by Article IV, Section 109 of the Constitution and subsection (2) of this section. Op. of Miss. Ethics Comm. Op. No. 98-087-E.

An alderman may be involved in the discussions and/or action of the board of aldermen to extend water and sewer services to undeveloped real property located adjacent to the city that is owned by individuals, individually and through other entities, that also own the firm that employs the alderman, where it appeared that the alderman in question would not have a prohibited interest in the anticipated contract. Op. of Miss. Ethics Comm. Op. No. 98-088-E.

An alderman's son may be employed by the city as a police officer if the alderman's son is totally and completely financially independent from the alderman and the alderman has no interest, direct or indirect, in the son's employment contract with the city. Op. of Miss. Ethics Comm. Op. No. 98-091-E.

A nonprofit entity may not continue to receive funding from a city through court assessments and direct appropriations if the director of the nonprofit entity is elected to the city council. Op. of Miss. Ethics Comm. Op. No. 98-096-E.

A city may not fund a nonprofit corporation when the chairman of the board of the nonprofit corporation is also an alderman with the city. Op. of Miss. Ethics Comm. Op. No. 98-099-E.

The state conflict of interest laws did not as such prohibit an alderman being employed at a county tax assessor/collector's office; but a circumstance could exist that would cause a violation of the conflict of interest laws should there be a contract between the two governmental entities in which the public servant would have a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 99-125-E.

A city is prohibited from purchasing from a large national corporation's retail store when a member of the board of aldermen is employed by the large national corporation at one of its retail stores, and this prohibition will apply during the alderman's term and for one year thereafter; the only applicable exception is if the goods or services involved are reasonably available from two or fewer commercial sources, provided such transactions comply with the public purchases laws. Op. of Miss. Ethics. Comm. Op. No. 00-036-E.

A city is prohibited from purchasing from a large national corporation's retail store when a spouse of a member of the board of aldermen is employed by the large national corporation at one of its retail stores, and this prohibition will apply during the alderman's term and for one year thereafter; the only applicable exception is if the goods or services involved are reasonably available from two or fewer commercial sources, provided such transactions comply with the public purchases laws. Op. of Miss. Ethics. Comm. Op. No. 00-036-E.

An individual is not prohibited from continuing to contract with a county to operate its water system as an independent contractor if the individual is elected mayor of a city located inside the county; however, a conflict of interest could arise if there were a contract between the municipality and county in which the individual, as the operator of the county water system and as the mayor of the city, would have a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 00-038-E.

An incorporated restaurant in which an individual was part of the management team and a minority owner would be prohibited from doing business with casinos that had contracts with the city, such as lease contracts, if the individual became a member of the city council, and a recusal or abstention by the city council member would not avoid the violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-041-E.

It is not as such a violation of the conflict of interest laws for a bailiff with the county sheriff's department to simultaneously serve as an alderman with a city located within the county employing the bailiff as a city and a county are separate governmental entities; however, the bailiff would be required to recuse himself from all matters coming before the board of aldermen that concerned his county employer if he was elected. Op. of Miss. Ethics. Comm. Op. No. 00-048-E.

A city council member, who is also a bail bondsman, is prohibited from writing bail bonds for the release of defendants arrested and held in the custody of the law enforcement entity of the city the council member is elected to serve. Op. of Miss. Ethics. Comm. Op. No. 00-067-E.

It is not a violation of the state conflict of interest laws for an alderman who is an attorney to have a part-time, hourly contract with the Attorney General's office to do legal research; however, an alderman must not use his official position with the city in any way to obtain or keep a part-time contract with the Attorney General's office and, therefore, must totally and completely recuse himself from any matter coming before the city board that involves the Attorney General's office including grants from the Attorney General's office. Op. of Miss. Ethics. Comm. Op. No. 00-082-E.

A city is prohibited from contracting with a large national corporation through one of its divisions where a member of the city's board of aldermen is employed by the corporation in one if its other divisions and where the alderman holds shares in the corporation, and this prohibition will apply during the alderman's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-087-E.

It is not a violation of the state conflict of interest laws for a city council member to be employed by the county to coordinate work between the county and the Mississippi Emergency Management Agency; however, a violation of the statute would occur if there existed contracts between the two governmental entities in which the public servant would have an inherent interest and/or a private pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 00-089-E.

An alderperson accepting a position as deputy county tax collector or currently serving in a position of deputy county tax collector would violate the statute if an interlocal agreement between the city and the county for the county tax collector's office to collect the city's taxes was entered into during the alderperson's term, was renewed during the alderperson's term, and/or if payments under such an agreement were made or continued during the alderperson's term; further, the same prohibitions that applied during the alderperson's term would apply for one year after the end of the alderperson's term. Op. of Miss. Ethics. Comm. Op. No. 00-118-E.

A mayor cannot be employed and compensated by an engineering firm for as long as the engineering firm remains the city's engineering firm. Op. of Miss. Ethics. Comm. Op. No. 00-119-E.

An alderman could participate in matters before the mayor and board of aldermen that had been the issue of an official opinion from the Attorney General to the city or to any other public entity where the alderman was a part-time, contract attorney with the Attorney General's Office; however, the alderman would be required to totally and completely recuse himself from any matter coming before the city board that involved the Attorney General's office, including grants from the Attorney General's office. Op. of Miss. Ethics. Comm. Op. No. 00-120-E.

The donation of real property by an alderman to the city for use as a site for a new water tower will not violate the state conflict of interest laws unless the transfer of the real property from the alderman to the city is not to be a true donation or there is an interest or benefit accruing to the alderman. Op. of Miss. Ethics. Comm. Op. No. 00-125-E.

It is not a violation of the state conflict of interest laws for a city council member to be employed by a county-owned community hospital to plan and promote special activities for senior citizens in a multicounty service area; however, a violation of the section will arise in the event of a contract between the two governmental entities in which the public servant would have an inherent interest and/or a private pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 00-127-E.

An alderman was prohibited from performing masonry work on houses for his father, who was the builder and developer of the subdivision in which the houses were located, where the alderman's father received a loan approved by the board of aldermen to assist him in the development of the subdivision, and this prohibition would apply during the alderman's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-128-E.

A former member of the board of aldermen, within one year of the end of the former alderman's term, can be appointed to the board of trustees of a community hospital owned jointly by the city and certain county districts. Op. of Miss. Ethics. Comm. Op. No. 00-137-E.

It is not a violation of the state conflict of interest laws for one spouse to serve as an elected member of a county board of supervisors and the other spouse to serve as an elected member of the board of aldermen for a city located within the county the other spouse serves as a supervisor. Op. of Miss. Ethics. Comm. Op. No. 01-003-E.

An employee of a natural gas district can serve as an alderman of a city that participated in the creation of the district and that receives significant funding from the district; however, a violation of the statute could arise if there was a contract between the district and the city in which the employee of the natural gas district had a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 01-017-E.

An employee of a natural gas district could serve as an alderman of a town that participated in the creation of the district and that received significant funding from the district; however, a violation of the statute could arise if there was a contract between the district and the city in which the employee of the natural gas district had a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 01-019-E.

An employee of a natural gas district can serve as an alderman of a town that participated in the creation of the district and that receives significant funding from the district; however, a violation of the statute could arise if there was a contract between the district and the city in which the employee of the natural gas district had a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 01-021-E.

An alderman can serve as an uncompensated member of the board of directors of a quasi-governmental, nonprofit industrial development authority established by the county's industrial development district where the city does not provide any direct funding to either the authority or the district; however, the alderman would be required to totally and completely recuse herself from any matter coming before the board of aldermen that concerned the nonprofit industrial development authority. Op. of Miss. Ethics. Comm. Op. No. 01-022-E.

A city could continue to contract with a bank if an individual serving on the bank's advisory board was elected to the city's board of aldermen as the individual's ownership interest in the bank was less than two percent with an aggregate annual net income of less than $ 5,000.00. Op. of Miss. Ethics. Comm. Op. No. 01-023-E.

It is not a violation of the state conflict of interest laws for an employee of a state department to simultaneously serve as a municipality's mayor; however, a violation of the section could arise in the event of a contract between the two governmental entities in which the mayor would have an inherent interest and/or a private pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 01-031-E.

It is not a violation of the conflict of interest laws for an elected school board member to simultaneously serve as a mayor, even though the municipality the mayor serves is located within the school district; however, the individual would be prohibited from directly or indirectly having an inherent interest and/or receiving a personal or pecuniary benefit from the school district or the municipality as a result of any contracts existing between the two governmental entities authorized during his terms of office or within one thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-071-E.

A city is prohibited from authorizing a contract with a bank to secure interim financing of a sewer bond issue, or for other purposes, when an alderman serving the city has a spouse that the bank employs, and the prohibition applies during the alderman's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-075-E.

An individual employed by the county as a veterans advocate can simultaneously serve as an alderman as a city and a county are separate governmental entities; however a violation of the section would arise in the event of a contract between the two governmental entities in which the individual would have an inherent interest and/or would receive a personal or pecuniary benefit or where the governmental entity that the individual served as a board member appropriated funds to the governmental entity employing the individual and that funding directly or indirectly resulted in a personal and pecuniary benefit to the public servant. Op. of Miss. Ethics. Comm. Op. No. 01-077-E.

A city is prohibited from contracting for the maintenance and repair of its vehicles with a business in which an alderman has an ownership interest despite the fact that no other business located within the city can provide these services, and this prohibition will apply during the alderman's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-078-E.

The mayor of a special charter city can vote in favor of increasing his salary in the event of a tie vote by the council members regarding the salary increase. Op. of Miss. Ethics. Comm. Op. No. 01-103-E.

A municipality is prohibited from continuing to purchase vehicles, receive services, or contract in any other way with a car dealership that employs the mayor during the mayor's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-118-E.

A city may not contract with a company to lay water lines when one of the city's aldermen is employed by the company. Op. of Miss. Ethics. Comm. Op. No. 01-128-E.

An individual who is purchasing a house from an alderman's son and his partner may use monies from the city's Community Development Block Grant as the down payment on the house when the individual's approval for participation in the block grant program and the authorization of the down payment must be approved by the mayor and board of aldermen, so long as the alderman will not profit from the transaction. Op. of Miss. Ethics. Comm. Op. No. 02-001-E.

A municipality may provide funding to the Chamber of Commerce to carry out community promotions and productions of community events when the municipality's mayor's spouse serves on the board of the Chamber of Commerce. Op. of Miss. Ethics. Comm. Op. No. 02-003-E.

The mayor and board of aldermen may appoint an individual to the board of trustees of the municipal school district where the individual's spouse ceased to be employed by the municipal school district prior to the individual's appointment. Op. of Miss. Ethics. Comm. Op. No. 02-004-E.

A member of the board of aldermen must recuse himself for a vote on a town's annexation that includes the board member's business property. Op. of Miss. Ethics. Comm. Op. No. 02-016-E.

A city council member may not sell property to the city under the Flood Acquisition Assistance program, which the city council member approved, even if the council member derives no profit from sale of the property and the city pays less than appraised fair market value for the property; further, the city council member may not sell the property to a third party without profit, with the third party then selling the property to the city under the Flood Acquisition Assistance program. Op. of Miss. Ethics. Comm. Op. No. 02-021-E.

A city alderman must recuse himself from all city discussions and actions related to a developer subdividing lots within the alderman's neighborhood. Op. of Miss. Ethics. Comm. Op. No. 02-023-E.

An alderman's son, who is currently employed as a deputy sheriff, may be simultaneously employed as a police officer by the city that the alderman serves, but only if the alderman is totally and completely financially independent from the son. Op. of Miss. Ethics. Comm. Op. No. 02-024-E.

It is not as such a violation of the state conflict of interest laws for a mayor to contract as a lobbyist with the Mississippi Municipal League while serving as a mayor for a city that pays dues to the league. Op. of Miss. Ethics. Comm. Op. No. 02-030-E.

A city council may act on a re-zoning application when one of the council members is the real estate broker for the property sale; however, the interested council member must totally and completely recuse himself from any matter going before the city council that concerns the property. Op. of Miss. Ethics. Comm. Op. No. 02-033-E.

It is not a violation of the state conflict of interest laws for an alderman to serve as a member of the National Guard. Op. of Miss. Ethics. Comm. Op. No. 02-041-E.

An alderman may be a paid consultant to another city that buys excess natural gas from the alderman's city, as the public monies involved would flow from the city to whom the alderman is a consultant to the city where he is an alderman and, therefore, his actions on the board of aldermen would not provide an inherent interest or a personal or pecuniary benefit to the alderman as a consultant. Op. of Miss. Ethics. Comm. Op. No. 02-042-E.

A municipal board member may join a lawsuit against the municipal board, but must then totally and completely recuse himself from any matter coming before the municipal board concerning the lawsuit of which he is a party. Op. of Miss. Ethics. Comm. Op. No. 02-049-E.

An alderman's brother may purchase land from the alderman's city without violating the conflict of interest laws. Op. of Miss. Ethics. Comm. Op. No. 02-051-E.

An individual may simultaneously hold political office as a city board member and a state legislator. Op. of Miss. Ethics. Comm. Op. No. 02-063-E.

A city council member's insurance agency may be endorsed by the local Chamber of Commerce for use by its members when the Chamber of Commerce receives a portion of its funding from the municipality. Op. of Miss. Ethics. Comm. Op. No. 02-065-E.

A city council member's insurance agency may not contract with the wastewater authority that contracts to provide services to the city. Op. of Miss. Ethics. Comm. Op. No. 02-065-E.

A city may not accept a donation from a beverage company in exchange for an exclusive contract with the company to sell soft drinks on city property and at city functions when a bottling company employing one of the city's aldermen has an exclusive franchise with the company for the area in which the city is located. Op. of Miss. Ethics Comm. Op. No. 02-073-E.

It is not a violation of Miss. Const. Art. 4, § 109 and § 25-4-105(2) for a mayor to request and receive a historic preservation district tax abatement from the city he serves since granting the tax abatement results in the city withholding its right to impose its legal authority to tax and does not result in an authorization of a contract. Op. of Miss. Ethics Comm. Op. No. 02-075-E.

A mayor may participate in a hearing to re-zone property from agricultural to residential use when the owners of the property may in the future request the property to be re-zoned commercial for a funeral home that would compete with the mayor's business. Op. of Miss. Ethics Comm. Op. No. 02-100-E.

It is not a violation of the conflict of interest laws for a city council member to simultaneously serve as director to the county emergency communications commission, created by the county board of supervisors, so long as no contracts exist between the two governmental entities, the county and the city, in which the city council member would have an inherent interest and/or a private pecuniary benefit. Op. of Miss. Ethics Comm. Op. No. 02-104-E.

An alderman is prohibited from being employed as an apartment manager by a corporation that received a multifamily complex building grant during the alderman's term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-106-E.

10. —Conflict involving family member.

Section does not prohibit emancipated son of alderman from becoming employee of same city. Particular factors indicating emancipation are key determinants in decision. However, alderman/father should not participate in any board matter concerning son. Furthermore, Commission expressed concern that son's emancipation could be direct result of his obtaining job with city, financially enabling him to live apart from parents; should that be true, alderman/father would have interest in son's employment contract, implicating prohibitions of section. Op. of Miss. Ethics Comm. Op. No. 90-065-E.

Section prohibits town from contracting with local bank where spouse of alderman is assistant vice president of bank. Under such facts, alderman would have an interest in any contract authorized by his board, as without order of the board the city would be unable to proceed with the particular contractual arrangement described. Op. of Miss. Ethics Comm. Op. No. 91-054-E.

Ethics violation exists where person is elected alderman whose spouse is sergeant on city's police department. Once city's annual budget is adopted or like official action takes place which affects spouse of alderman, a violation of Constitutional Section 109 and Code Section 25-4-105(2) will occur. Op. of Miss. Ethics Comm. Op. No. 92-111-E.

Violation of ethics laws would occur should spouse of councilperson serve as public defender following spouse's appointment by mayor in mayor-council form of city government. Op. of Miss. Ethics Comm. Op. No. 93-133-E.

No conflict of interest violation under Section 25-4-105(1) exists where a city is negotiating to buy property from the father of an alderman, as long as the alderman and his father are financially independent of each other, the alderman will receive no financial benefits from the sale, and the alderman recuses himself from any action before the Commission which could affect his father. The alderman should leave the room or area where the discussions and actions are taking place, and the minutes of the meeting should reflect his absence. Op. of Miss. Ethics Comm. Op. No. 94-009-E.

Purchase of land declared by a town to be surplus and ordered to be sold to the highest and best bidder cannot be made by the spouse of an alderman, even if that alderman was completely recused from the deliberations and voting regarding the land. An alderman would have an interest in a purchase by his or her spouse, in violation of Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 94-045-E.

A town may simultaneously employ two spouses if neither is an alderman or mayor, or relative thereto, neither spouse has supervisory power over the other, and employment rests with the mayor or board of aldermen without authorizing action by either spouse. Op. of Miss. Ethics Comm. Op. No. 94-053-E.

The spouse of a city's mayor may not be employed by the city's tourism commission without violation of ethics laws, as the mayor has an interest in his spouse's salary and that salary is authorized by the mayor and city council through approval of the city budget. Op. of Miss. Ethics Comm. Op. No. 94-106-E.

An alderman, councilman, and/or selectman may not serve in his or her elected capacity while a spouse is employed by the same municipality. Op. of Miss. Ethics Comm. Op. No. 95-002-E.

A municipality operating under a code charter form of government may not contract with a printing company owned by the spouse of the municipality's city clerk if the city clerk has any control, direct or indirect, in the municipality's purchasing process. Op. of Miss. Ethics Comm. Op. No. 95-009-E.

A county industrial development authority may purchase from the son of one of its board members the right-of-way for an access road to an industrial development site to be deeded to a municipality for designation as a public road, provided the son is entirely financially independent from his father and has no financial relationships existing with the father including any joint business interests. Op. of Miss. Ethics Comm. Op. No. 95-015-E.

The spouse of a county election commissioner may become a candidate for county supervisor for the same district in which the election commissioner/spouse was elected, and if elected, serve in the office of county supervisor. Op. of Miss. Ethics Comm. Op. No. 95-041-E.

A municipality may employ the son-in-law of the mayor as a police officer, provided both the daughter and the son-in-law of the mayor are financially independent and free from the control of the father/mayor. Op. of Miss. Ethics Comm. Op. No. 95-043-E.

A legislator's spouse may not sell office machinery to state agencies located within a specified territory assigned to the spouse by his or her employer. Op. of Miss. Ethics Comm. Op. No. 95-052-E.

It is a violation of Constitutional Section 109 and 25-4-105(2) for the spouse, parent or child of a county supervisor to be employed by an authority of the county government. Op. of Miss. Ethics Comm. Op. No. 95-057-E.

It is a violation of Section 25-4-105(3)(b) for an economic development authority to sell property to the spouse of its assistant director. Op. of Miss. Ethics Comm. Op. No. 95-060-E.

An alderman may vote to approve and pay the municipality's docket of claims when it includes invoices from a hardware store owned by the alderman's brother. This situation does not violate the conflict of interest laws as a brother is not included in the definition of "relative" set forth in Code Section 25-4-103(q). However, the alderman should recuse himself in order to avoid the appearance of impropriety under Code Section 25-4-101 and avoid using his official position to obtain pecuniary benefit under Code Section 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 95-071-E.

An appointee serving on a state commission that appropriates funds to a local entity on which the appointee's spouse serves as director which directly or indirectly increases the spouse's compensation violates Constitutional Section 109 and Code Section 25-4-105(2). Penalties imposed by Code Sections 25-4-109, 25-4-111 and 25-4-113 are also discussed. Op. of Miss. Ethics Comm. Op. No. 95-083-E.

The spouse of a mayor may be employed by the municipality's housing authority without violating Constitutional Section 109 and Code Section 25-4-105(2) as the housing authority is a separate governmental authority from the mayor and board of aldermen. Op. of Miss. Ethics Comm. Op. No. 95-093-E.

A husband and wife, who are both teachers, may sell educational video materials to school districts other than to their school district employers. It is a violation of Section 25-4-105(3)(a) for them to sell to their school district employers. Op. of Miss. Ethics Comm. Op. No. 95-100-E.

An alderman's parent may be a contractor under a home renovation grant funded by federal funds when the alderman's municipality received the grant if the alderman and parent are financially independent. However, the alderman was cautioned regarding Sections 25-4-101 and 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 95-107-E.

The spouse of a municipal law enforcement officer can write bail bonds in the officer's municipality as a bail bond agent for a company in which the spouse it not an owner or officer. The spouse can not write bail bonds in the officer's municipality if the officer or the spouse own the bail bond company. Op. of Miss. Ethics Comm. Op. No. 95-144-E.

A county coroner may contract with the coroner's father-in-law to transport bodies. Op. of Miss. Ethics Comm. Op. No. 95-150-E.

A municipality may employ the daughter-in-law of the mayor if the mayor and the son and daughter-in-law are financially independent from the mayor and the mayor properly recuses himself. Op. of Miss. Ethics Comm. Op. No. 95-154-E.

A county may not purchase parts from an equipment company employing the spouse of the county purchase clerk since to do so would violate § 25-4-105(1) and/or (3)(a). Op. of Miss. Ethics Comm. Op. No. 96-010-E.

A county may not purchase parts from an equipment company employing the spouse of the county purchase clerk since to do so would violate § 25-4-105(1) and/or (3)(a). Op. of Miss. Ethics Comm. Op. No. 96-015-E.

A county may purchase supplies and commodities from a company owned by a county supervisor's brother. However, the county was cautioned regarding § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-018-E.

A county may employ the son of a county supervisor as a road department employee if the county is operating under a county-wide system of road administration and the son is totally and completely financially independent from the supervisor. However, the county was cautioned regarding § 25-4-101 and § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-047-E.

Constitutional Section 109 and § 25-4-105(2) and (3)(a) prohibit a school district's re-employment of the school board member's spouse during his term, and for one (1) year thereafter. Op. of Miss. Ethics Comm. Op. No. 96-075-E.

A school board may employ the sons of one of its members as an architect and as an attorney if they are financially independent from the father. However, the board was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-081-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a municipal park and recreation commission from contracting with or employing its members, its members' spouses and its members' financially dependent children or parents. The commission was also cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-095-E.

Section 25-4-105(1) and (5) prohibits a university employee who is the principal investigator on a research project from using his public position or using nonpublic information gained through his public position to assist his spouse's employment as the research associate for the research project. The employee was also cautioned regarding § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-102-E.

Section 25-4-105(1) prohibits the chair of a university department from using his public position to obtain a graduate assistantship for his son within his department. The chairperson was also cautioned regarding § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-104-E.

Constitutional Section 109 and § 25-4-105(2) cause a county supervisor to have a prohibited interest in his future spouse's employment contract with the county once they are married, after the board of supervisor's approval of the subsequent budget. Op. of Miss. Ethics Comm. Op. No. 97-016-E.

Section 25-4-105(3)(a) prohibits a county tax assessor/collector from having a material financial interest in a bank serving as the county's depository, as the county tax assessor/collector exercises indirect control over the county's contracts with its depositories. A county tax assessor/collector has a material financial interest in a county depository when the county tax assessor/collector's spouse is a compensated officer and director for the county depository. Op. of Miss. Ethics Comm. Op. No. 97-114-E.

Constitutional Section 109 and § 25-4-105(2) would prohibit the city's employment of the mayor's son-in-law if the mayor was directly or indirectly interested in the son-in-law's employment. In order for the mayor to not be interested in the son-in-law's employment with the city, the mayor must be totally and completely financially independent from his son-in-law and daughter. Section 25-4-101 and § 25-4-105(1) require that the mayor totally and completely recuse himself from the action employing or any future actions compensating or providing other pecuniary benefits to his financially independent son-in-law. Op. of Miss. Ethics Comm. Op. No. 97-124-E.

The spouse of a division director of a state department may not sell educational products to local school districts when the state department accepts the bids, awards the contracts and provides the funding for the educational products. Op. of Miss. Ethics. Comm. Op. No. 97-162-E.

A municipality may contract with an office supply store owned by the spouse of one of the municipality's utilities clerks where the clerk exercises no control, direct or indirect, over the contract between the spouse and the municipality. Op. of Miss. Ethics Comm. Op. No. 98-029-E.

It is not a violation of the state conflict of interest laws for a mayor's spouse to be employed by the municipality's housing authority, as long as the housing authority receives no funding of any kind or no additional bond issuing authority from the mayor and aldermen; however, a mayor, whose spouse is an employee of the municipality's housing authority, should totally and completely recuse himself or herself from matters involving the appointment of housing authority members. Op. of Miss. Ethics Comm. Op. No. 98-035-E.

A county may simultaneously employ both spouses where neither spouse is in a position to authorize the other's employment with the county. Op. of Miss. Ethics Comm. Op. No. 98-038-E.

A company employing the spouse of one of the county's employees is prohibited from being a contractor, subcontractor or vendor with the county if the county employee's spouse has a material financial interest in the company, unless the county employee exercises no control, direct or indirect, over the contract between the public servant's spouse's company and the public servant's governmental entity. Op. of Miss. Ethics Comm. Op. No. 98-039-E.

A city cannot employ an alderman's stepdaughter if the alderman is directly or indirectly interested in the stepdaughter's employment contract; in order for the alderman to avoid a violation, the alderman's stepdaughter must be totally and completely financially independent from the alderman and the alderman must have no interest, direct or indirect, in the stepdaughter's employment contract with the city; further, the alderman may not participate in employment matters concerning his stepdaughter, as well as matters concerning pay raises or the increasing of other benefits that would benefit the alderman's stepdaughter. Op. of Miss. Ethics. Comm. Op. No. 00-021-E.

A city's employment of an alderman's son-in-law is prohibited if the alderman is directly or indirectly interested in the son-in-law's employment; in order for an alderman to be uninterested in the son-in-law's employment with the city, the alderman must be totally and completely financially independent from his son-in-law and daughter. Op. of Miss. Ethics. Comm. Op. No. 00-077-E.

A city's employment of one of its alderman's spouses during the alderman's term and for one year thereafter is prohibited; thus, where a police officer's spouse is elected to the board of aldermen, the police officer must resign prior to the newly elected board of aldermen rehiring the city's employees and/or the employees being compensated through a budget having been approved by the newly elected board of aldermen. Op. of Miss. Ethics. Comm. Op. No. 00-078-E.

A city could purchase a historical property from the estate of the mother of an alderman's former spouse where the alderman's adult child was an heir of the estate and would share in the proceeds from the sale of the historical property if the alderman's child was totally and completely financially independent from the alderman and the alderman had no interest, direct or indirect, in the purchase contract. Op. of Miss. Ethics. Comm. Op. No. 01-013-E.

A city was prohibited from authorizing a contract with a bank to serve as its depository, or for other purposes, while an alderman serving the city had a spouse that the bank employed, and the prohibition would apply during the alderman's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-016-E.

The spouse of a newly elected mayor cannot continue to contract with the city if the spouse's contract is authorized by the city's newly elected governing authority or if the funding to pay for the spouse's contract is approved by the city's newly elected governing authority. Op. of Miss. Ethics. Comm. Op. No. 01-039-E.

A town board is prohibited from reappointing/or reemploying a new mayor's child as city clerk if the mayor will have an interest, direct or indirect, in the child's employment contract with the town; in order for the mayor to avoid a violation of the section 109, the mayor must be totally and completely financially independent from his child and have no interest, direct or indirect, in the child's employment contract with the town. Op. of Miss. Ethics. Comm. Op. No. 01-073-E.

A city is prohibited from contracting with an alderman's son-in-law's business if the alderman is directly or indirectly interested in the son-in-law's business contracts; in order for the alderman to avoid a violation of the section, the alderman must be totally and completely financially independent from his son-in-law and daughter and have no interest, direct or indirect, in the son-in-law's business' contracts with the city. Op. of Miss. Ethics. Comm. Op. No. 01-079-E.

The spouse of an alderman was prohibited from being a developer in a housing development project for which the town was the governmental entity that procured the federal grants and loan funds and in which the town acted as mortgagor, and this prohibition applied during the alderman's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-081-E.

An alderman's father can work for the city on a part-time basis if the alderman's father is totally and completely financially independent from the alderman and the alderman has no interest, direct or indirect, in the father's employment contract with the municipality. Op. of Miss. Ethics. Comm. Op. No. 01-095-E.

A board of aldermen can accept a bid to purchase a backhoe from a company that employs the brother of one of the aldermen as a brother is not a "relative" for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-104-E.

An alderman could not vote on an amendment to the city's beer ordinance that would allow restaurants to have extended hours of operation past what was currently allowed by the existing beer ordinance where the alderman's son-in-law was a part owner of a restaurant in the city licensed to sell beer on-premises; the alderman was required to totally and completely recuse himself from all matters before the city's governing board concerning the amendment to the beer ordinance. Op. of Miss. Ethics. Comm. Op. No. 01-115-E.

A city may not authorize a contract with a bank to serve as its depository, or for other purposes, when the mayor serving the city has a spouse that the bank employs; and this prohibition applies during the mayor's term and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-129-E.

An individual may not remain town attorney after marrying one of the town alderman, even of the individual volunteers his services and receives no compensation. Op. of Miss. Ethics. Comm. Op. No. 02-020-E.

An alderman may not in any way be involved in the board of aldermen's decision to employ his daughter as a city prosecutor should it be determined that his daughter is financially independent from him and that the alderman is not interested, directly or indirectly, in his daughter's employment contract with the city; in addition, the alderman may not be involved in any decisions of the board of aldermen concerning pay raises or the increasing of other benefits that would benefit his daughter should she be employed by the city. Op. of Miss. Ethics Comm. Op. No. 02-081-E.

A city is prohibited from purchasing insurance from an insurance company in which an alderman and/or his spouse serve as officers and which leases office space from an alderman, until one year after the alderman leaves office. Op. of Miss. Ethics Comm. Op. No. 02-099-E.

11. Public agency or commission.

State agency's having its vehicles repaired at dealership of one of its commissioners would be violation of section. Commissioner as owner of dealership has material financial interest in company which constitutes interest in any contract between his company and board of which he is member. Also, if commissioner participated in any positive manner in any board action allowing commission to do business with his company, such participation would constitute violation of section. Op. of Miss. Ethics Comm. Op. No. 89-44-E.

Executive director of state entity may simultaneously own business which sells public information produced by state where such venture will be on subject's personal time, no public facility or equipment or supplies would be used, and information is "public" in nature; advertising via television, radio, newspaper, or direct mail which reaches public employees or officials would not cause confrontation with ethics laws where any contract involved would not be contract with government entity but with private entity. However, to avoid appearance of impropriety, subject's public position and/or employer should not appear in conjunction with private business in any way and subject is reminded that he cannot use public employees or resources on behalf of private company. Op. of Miss. Ethics Comm. Op. No. 89-48-E.

Member of state commission may not participate through his corporation in sponsorship of improvements on state property in return for exclusive signage (publicity); thus where stadium is considering refurbishing existing scoreboard and adding color matrix system and would solicit corporate sponsorship to offset cost, each sponsor receiving privilege panel which would bear its name and logo, provision would be violated if local financial institution, in which commission member was officer, became one of such sponsors. Recusal by board member/corporate officer would be effective bar to application of subsection (1) but not as to subsections (2) or (3)(a) or § 109 of Constitution. Op. of Miss. Ethics Comm. Op. No. 89-67-E.

Insufficient information is provided to determine whether conflict of interest violation would exist where corporation, of which commission member is officer, would agree to place mobile automated machine on property of public stadium during football games. Op. of Miss. Ethics Comm. Op. No. 89-67-E.

Expanded board of newly renamed and modified statutory "governmental entity" may not offer executive position of employment to former board member less than one year after that member's resignation. Where prohibition is from accepting executive position with board "of which [person] was a member", governmental entity in question was same one of which subject was previously member, merely expanded and continued in slightly different form with four additional members. Op. of Miss. Ethics Comm. Op. No. 89-141-E.

Where corporation's president is member of board of directors of a state board, corporation is prohibited from selling materials to that state board; however, it is not prohibited from selling materials to other department of the state. Caution should be exercised by the state board member so that none of his actions as board member serves as a predicate to or trigger of purchases by other state agencies from board member's private corporation. Op. of Miss. Ethics Comm. Op. No. 90-092-E.

State public servant is prohibited from serving as administrator of a grant received by a county from state department of which public servant is member. Violation is present and continues even though contract predates employment by the state of the person involved. Op. of Miss. Ethics Comm. Op. No. 90-117-E.

Doctor who is National Health Service obligee employed by the Department of State of Mississippi who provides hospital care after normal working hours and on weekends and is reimbursed by Medicaid for such services for patients who are covered, and is willing to perform same services after hours and on weekends for non-Medicaid eligible patients, to be compensated by state, where there be no other doctors in area readily available to provide such service to such patients, may continue in such contractual arrangement, as long as his services are reasonably available from 2 or fewer commercial sources and provided that such transactions otherwise comply with public purchase laws. However caution is urged, for should doctor's after hours contractual obligations actually occur during or carry over into time in which he performs regular responsibilities, such would constitute prohibited use of his official position to obtain pecuniary benefit other than that compensation which is provided by law. Also, doctor is prohibited from recommending the services he would perform after hours to patients while on public duty and subsequently performing such service as private doctor. Op. of Miss. Ethics Comm. Op. No. 90-126-E.

City's convention commission and city itself are barred from purchasing or receiving land as donation from partnership, a substantial financial and operating interest of which is possessed by former chairperson of convention commission, within one year after his resignation. Op. of Miss. Ethics Comm. Op. No. 92-149-E.

Where city's Convention Commission acquires land from partnership in which one of its former members has financial interest, violation occurs; although Commission may discuss and decide upon one or more sites in order of preference based on demographic merits and economic factors, nevertheless, if Commission's decision is that its first preference is property in which former member holds interest, Commission may not decide that if property is still available at end of one year from former member's resignation Commission would then seek to acquire property. Contract in such case would be authorized during one year period, and simply delaying its execution does not preclude application of prohibition. Furthermore, violation would occur even if partnership was willing to donate land, if partnership also owned land surrounding the land which would be donated, as surrounding land would very likely increase in value and thereby benefit former member who holds interest in it. Op. of Miss. Ethics Comm. Op. No. 92-166-E.

Law does not prohibit company from contracting with state commission where spouse of part owner of company is also employee of commission, but who exercises no control over contracts. Application of ethics code provisions rest upon determination of fact in each case; generally, as long as employee exercises no control over contracts, does not approve contracts, does not attempt to influence such decisions, and does not intentionally use or disclose non-public information as regards spouse's business, code sections would not be violated. Op. of Miss. Ethics Comm. Op. No. 92-182-E.

Where executive employee of state regulatory commission sought to resign state employment and become employed either by corporation or by one of its subsidiaries, one of which possessed license issued by commission and another which had no contact with employees of commission but expected to be considered for future license, no violation would occur simply by subject's becoming employed by one of the corporations; same would be the same where subject accepted employment with another subsidiary which conducts gaming activities within the state, or with another entity which plans to conduct gaming activities within the state but which has not yet been issued a license and which had no contact with any employee of commission, as long as former employee does not divulge confidential information. Op. of Miss. Ethics Comm. Op. No. 92-237-E.

Ethics laws do not prohibit city councilman from simultaneously being employee of state commission. Op. of Miss. Ethics Comm. Op. No. 93-022-E.

Law bars member of official state board from being compensated by company which enters into contract with board. Consequently member of board who has promoted eggs and other farm products as home economist and private contractor for number of years, may not engage in radio, television, or other media promotions where board of which she is member has entered into a contractual relationship with private company to produce and broadcast advertisement promoting eggs, where company would like to utilize aforementioned member in such advertisements, for compensation, and where agreement leads production questions including casting to discretion of the advertising company. Op. of Miss. Ethics Comm. Op. No. 93-104-E.

Law does not per se prohibit company owned by member of a state commission from becoming contractor, subcontractor, or vendor to private corporation which is licensed to commission, because license is not a contract; however, commission member must avoid using his position for pecuniary benefit and should recuse self from any commission action directly affecting any private corporation with which his company has been doing or reasonably expects to do business as contractor, subcontractor, or vendor with any entity licensed by commission. Commission member is also precluded from using or disclosing any information he obtains as result of his position to benefit himself or anyone else, if information has not been communicated to public or is not public information. In all Commission has grave concern as to appearance of impropriety that would arise from described arrangement. Op. of Miss. Ethics Comm. Op. No. 93-183-E.

Members of a local tourism commission, concurrently associated with two not-for-profit entities which receive grants from the tourism commission, are in violation of the conflict of interest provisions under Section 25-4-105(1) and (2), since both members have either fiduciary and/or pecuniary interests in their not-for-profit entities. To avoid a conflict of interest, the members could be designated as advisory board members without voting power. Op. of Miss. Ethics Comm. Op. No. 94-026-E.

Users of utility services are not prohibited by ethics laws from becoming members of the public boards and commissions governing those services, as long as the service is mandated by the state. Recusal should occur when a utility district is dealing with measures authorizing a contract with that member. Op. of Miss. Ethics Comm. Op. No. 94-033-E.

If it is determined by the Attorney General that a state commission's executive director and its staff may use a vehicle provided by a private association, the use must be exclusively for official business of the state. Personal use would be a pecuniary benefit to that individual and a violation of Section 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 94-044-E.

Members of a state education council, appointed to advise the state department as to education technology, may also be members of an industry hoping to contract with the state without violating ethics laws, as the council is advisory only, and has no rule-making authority. Op. of Miss. Ethics Comm. Op. No. 94-085-E.

A former associate manager of a state agency whose primary duty was to manage grant applications from local governments and to monitor grantees may become a consultant to local governments providing assistance in making new applications for grants to his or her former state agency employer, provided the former associate manager limits his or her consultant work to grant applications and/or grants that originate after his or her termination with the state agency. Op. of Miss. Ethics Comm. Op. No. 95-045-E.

It is not a violation of the conflict of interest laws for a state employee to have a part-time job, but where the part-time job is with an association regulated by the state agency there are many potential conflicts of interest and an appearance of impropriety under Section 25-4-101. Op. of Miss. Ethics Comm. Op. No. 95-063-E.

It is a violation of Constitutional Section 109 and/or Code Section 25-4-105(2) if board members of a state commission and a state stewardship coordinating committee administer a federal incentive program including the establishment of cost-share rates to be paid for implementing the practices by landowners to prepare plans to accomplish the practices which results in the board members being paid by the landowners under the federal incentive program at the cost-share rate they set as board members of the state commission and/or the state stewardship coordinating committee. Recusal and caution as to Sections 25-4-105(1) and 25-4-101 were recommended. Op. of Miss. Ethics Comm. Op. No. 95-066-E.

A former staff attorney for a state agency may contract with a company which he was involved with on behalf of the state in a permit process against that company if the contract with the company is unrelated to the permit process. Op. of Miss. Ethics Comm. Op. No. 95-090-E.

Former employees of a state agency may become consulting firm employees even though the consulting firm employs them to work on contracts with their former state agency employer as long as they do not work on projects they were directly concerned with during their public employment in violation of Section 25-4-105(3)(e). Op. of Miss. Ethics Comm. Op. No. 95-118-E.

An employee of a nonprofit consortium contracting with a state agency to implement a statewide computerized system is not a public servant under the conflict of interest laws when the nonprofit consortium was not given the authority to act for or in the place of the state agency. Op. of Miss. Ethics Comm. Op. No. 96-038-E.

A university employee may serve on a state commission which is awarding grants to a research facility that is providing administrative services by the university. However, the employee was cautioned regarding Constitutional Section 109, § 25-4-105(2) and (5) and § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-072-E.

The president of a nonprofit corporation may serve on a state commission that provides funding to the nonprofit corporation when the nonprofit corporation's purpose is quasi-governmental in nature. However, the president was cautioned regarding Constitutional Section 109 and § 25-4-105(2) and (3)(a). Op. of Miss. Ethics Comm. Op. No. 96-078-E.

Section 25-4-105(3)(a) prohibits a university from contracting with a lumber company when a university employee owns approximately 15% of the lumber company's stock. Op. of Miss. Ethics Comm. Op. No. 96-101-E.

Section 25-4-105(1) and (3)(a) and § 25-4-101 prohibit a division director of a state agency from performing marketing work for a computer software company that does business with the state and the division director's state agency. Op. of Miss. Ethics Comm. Op. No. 97-079-E.

Section 25-4-105(3)(a) prohibits a state agency's division from providing loans and grants to a nonprofit entity of which a member of the state agency's advisory board is a director if the advisory board member has a material financial interest in the nonprofit corporation. Op. of Miss. Ethics Comm. Op. No. 97-088-E.

Section 25-4-105(3)(e) does not prohibit a former state employee from being compensated for providing services to a business that contracted with the former state employee's agency, unless the compensation for performing services is related to "any case, decision, proceeding or application" with respect to which the former state employee was directly concerned or in which he personally participated. Op. of Miss. Ethics Comm. Op. No. 97-107-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a state task force board member or the member's business from contracting to provide services that are to be paid for from grants or other funds provided to the task force. Section 25-4-105(3)(a) prohibits a state task force board member or the member's business from being a contractor, subcontractor or vendor with the state unless the exception in § 25-4-105(4)(b) is applicable. Op. of Miss. Ethics Comm. Op. No. 97-119-E.

A company may not lease an airport facility from a city when a major stockholder in the company is a member of the city's airport commission and acts in an advisory capacity to the city council. Op. of Miss. Ethics Comm. Op. No. 98-010-E.

An individual may not continue to be employed by a company that sells to Mississippi state agencies if he is elected to the position of Secretary of State, even if he is personally involved only with the company's sales in other states, since he would still have a material interest in the company. Op. of Miss. Ethics Comm. Op. No. 98-026-E.

A board member appointed to a city board, commission or authority may resign his or her public position and immediately contract with the city's governing authority. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

An employee of a state agency is prohibited from purchasing surplus property of his or her state agency employer at an auction, even if the state agency employee is the high bidder and the check is made payable to the auctioneer. Op. of Miss. Ethics Comm. Op. No. 98-057-E.

A former member of a state board may be employed by a state commission within one year of the former member's term ending where the state commission and the state board are separate state agencies and, therefore, the former member is not being employed by the governmental body that he served as a board member. Op. of Miss. Ethics Comm. Op. No. 98-062-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a park commission member from accepting subcontractor employment with a county construction project if the county park commission was part of the authorization process for the county construction contract. Op. of Miss. Ethics Comm. Op. No. 98-071-E.

An individual who is a public servant of a state agency through an appointment to a trust fund advisory council may not enter into a personal service contract with a nonprofit corporation when the nonprofit corporation contracts with the state agency and if the public servant receives more than $5,000 per year from the nonprofit corporation. Op. of Miss. Ethics Comm. Op. No. 98-083-E.

A county officer or employee may simultaneously serve as an employee of the county E-911 commission without violating subsection (3)(a), and in like manner, a county E-911 commissioner may simultaneously serve as a county employee without violating subsection (3)(a); there is no violation because a county E-911 commission is a separate authority of the county from the county board of supervisors for purposes of the conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 98-124-E.

An architect and former city planning commissioner may not, within one year after his term, contract with the city to design a building for the city electric department when the proposed site to be used will require a zoning change, thereby requiring the city planning commission to grant a special exception. Op. of Miss. Ethics Comm. Op. No. 98-125-E.

A former city planning commissioner is prohibited from being compensated by an apartment developer to provide architectural services for an apartment development that will be located on a parcel of land that was rezoned by the city planning commission where the former commissioner personally participated in the commission's decision to recommend the approval of the developer's application. Op. of Miss. Ethics Comm. Op. No. 98-126-E.

A former city planning commissioner is prohibited from being compensated by a shopping center developer to provide architectural services for a shopping center development that will be located on a parcel of land that was rezoned by the city planning commission where the former commissioner personally participated in the commission's decision to recommend the approval of the developer's application. Op. of Miss. Ethics Comm. Op. No. 98-127-E.

An employee of a state agency may provide direction and consultation for a private company relative to the terms of a contract between the private company and another state agency only if the company's primary contract was let to it as the lowest and best bidder after competitive bidding or the company's services are reasonably available from two or fewer commercial sources, provided such transactions comply with the public purchases laws. Op. of Miss. Ethics Comm. Op. No. 98-129-E.

It is not a violation of Article IV, Section 109 of the Constitution or subsection (2) of this section for a city to enter into a contract for architectural services with a former member of the city's planning commission when the city's planning commission did not take any action prior to the former commissioner's resignation, and will not take any action within one year of the former commissioner's resignation in regard to the site of the proposed architectural project; however, if there is an action by the city's planning commission prior to the former commissioner's resignation or within one year of the former commissioner's resignation, then there would be a violation. Op. of Miss. Ethics Comm. Op. No. 98-135-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section will prohibit a former planning commissioner's architectural services contract with a city when the contract or the continuing of the contract ultimately depends on an action by the city planning commission to approve a special exception for the proposed site; this prohibition will remain in effect until one year after the former planning commissioner's resignation. Op. of Miss. Ethics Comm. Op. No. 98-135-E.

The state conflict of interest laws do not prohibit an executive director of a state agency from attending night and/or weekend real estate classes in an effort to obtain a realtor's license, from entering into consulting contracts with firms, institutions, associations, organizations and individuals, or from working in the real estate business; however, an executive director of a state agency will be prohibited from being a consultant or a real estate agent/broker by way of a contract with the state, and any business in which the executive director has a material financial interest by way of payments to him for his consulting or real estate work, will be prohibited from being a contractor, a subcontractor or a vendor with the state. Op. of Miss. Ethics Comm. Op. No. 99-042-E.

A city utilities commission may not use a local automobile dealership for warranty repair and service work on a certain manufacturer's vehicles it owns when the dealership has recently acquired that certain manufacturer's agency and when the dealership is owned by the chairman of the city utilities commission. Op. of Miss. Ethics Comm. Op. No. 99-052-E.

A community mental health agency's director is prohibited from authorizing the employment of the father of an employee of the agency to do work for the agency on a contractual basis when the employee of the agency is the person responsible for hiring his or her father to perform the contractual work. Op. of Miss. Ethics Comm. Op. No. 99-054-E.

It is not as such a violation of the state conflict of interest laws for a real estate appraiser who is a member of the city planning and zoning commission to oppose a landscape ordinance that financially affects commercial property developers when the appraiser once was the agent for one of the developers. Op. of Miss. Ethics Comm. Op. No. 99-064-E.

A city planning and zoning commission member may not perform appraisals for the city and be compensated by the city for said appraisals. Op. of Miss. Ethics Comm. Op. No. 99-064-E.

The state conflict of interest laws do not as such prohibit a builder, an insurance agent and an architect from serving on the city planning and zoning commission. Op. of Miss. Ethics Comm. Op. No. 99-064-E.

It is not as such a violation of the state conflict of interest laws for a waterway district to employ the granddaughter of a member of the waterway district's board of directors. Op. of Miss. Ethics Comm. Op. No. 99-077-E.

Neither a member of a city planning board nor the member's spouse may contract with the city. Op. of Miss. Ethics Comm. Op. No. 99-0-81E.

A real estate appraisal company, whose owner serves as a member of the urban renewal agency established by the city, may contract with the city's governing authority only where the contract is let to the lowest and best bidder after competitive bidding, and three or more legitimate bids are received, or where the goods or services involved are reasonably available from two or fewer commercial sources, provided such transactions comply with the public purchases laws. Op. of Miss. Ethics Comm. Op. No. 99-091-E.

An employee of the Yazoo-Mississippi Delta Levee District may simultaneously serve as a commissioner and member of the Board of

Commissioners of the Yazoo Mississippi Delta Joint Water Management District. Op. of Miss. Ethics Comm. Op. No. 99-094-E.

A state agency could contract with a company where the president of the company was the spouse of an employee of the state agency as the state agency employee was not in an employment position that allowed her to exercise control, direct or indirect, over the contract between her spouse's company and the state agency and also had no personal or pecuniary interest in the company except through her spouse's personal and pecuniary interest; however, the state agency would be required to establish rules and procedures to prevent the employee from discussing her spouse's company's bid, and, if applicable later, her spouse's company's contract with state agency staff or any other person including casual comments, as well as detailed discussions, made in person, by telephone or by any other means. Op. of Miss. Ethics. Comm. Op. No. 99-E.

It was not as such a violation of the state conflict of interest laws for the executive director of a state agency that had as its primary responsibility the state's finances, whose resignation would be effective December 31, 1999, to accept employment with a private financial advisory company effective January 1, 2000, when the private financial advisory company would be contracting with the Public Corporation beginning on January 1, 2000. Op. of Miss. Ethics. Comm. Op. No. 99-108-E.

An employee of a state agency may not purchase items at an auction being held to sell items belonging to either that state agency or any other state agency. Op. of Miss. Ethics. Comm. Op. No. 99-109-E.

A city may not enter into a contract with an employee of the city to operate the city animal shelter. Op. of Miss. Ethics. Comm. Op. No. 99-117-E.

State board members are prohibited from using their official positions to overturn a decision of a state department allowing the establishment of new rehabilitation services at a petitioning facility when such action will provide a pecuniary benefit to a facilities with which the state board members are associated. Op. of Miss. Ethics. Comm. Op. No. 99-121-E.

State board members are prohibited from using their official positions to alter current state board regulations and policies as they apply to an industry as a whole when the action will provide a pecuniary benefit to facilities with which the state board members are associated. Op. of Miss. Ethics. Comm. Op. No. 99-121-E.

Although every circumstance cannot be anticipated, generally the members of a state board may participate and vote on matters which equally affect, both theoretically and practically, all facilities within an industry as a whole and which do not create or perpetuate specific advantage or disadvantage, i. e. a pecuniary benefit, for facilities with which the board members are associated. Op. of Miss. Ethics. Comm. Op. No. 99-121-E.

A former public service commissioner is prohibited from being selected as an arbitrator by the Public Service Commission within one year of the end of his term of office. Op. of Miss. Ethics. Comm. Op. No. 99-122-E.

A former public service commissioner is prohibited from serving as an arbitrator selected by the Public Service Commission when the arbitration concerns any case, decision, proceeding, or application with respect to which the former public service commissioner was directly concerned or in which he personally participated during his service as a public service commissioner. Op. of Miss. Ethics. Comm. Op. No. 99-122-E.

Although an employee of a planning and development district is not as such prohibited from serving as a member of the board of trustees of a community college, a violation of the conflict of interest laws could arise in the event of the existence of contracts between the two entities in which the public servant would have a private pecuniary interest or an inherent interest. Op. of Miss. Ethics. Comm. Op. No. 99-124-E.

Simultaneous service as a senior planner for a regional planning commission that served as the metropolitan planning commission for the region within which a city was located and on the city's planning commission could cause a violation of the conflict of interest laws in the event of the existence of contracts between the regional planning commission and the city, if the planner had an inherent interest and/or a private pecuniary benefit in such contracts, and a recusal or an abstention would not prevent such a violation. Op. of Miss. Ethics. Comm. Op. No. 99-E.

An individual who was a 20 percent minority shareholder and an officer of a company could not serve as a member of a board of levee commissioners where the company maintained an existing lease with the board of levee commissioners. Op. of Miss. Ethics. Comm. Op. No. 00-003-E.

A member of an economic development district was prohibited from accepting employment with a limited partnership during his term and for one year thereafter where the economic development district and the limited partnership had entered into contracts during his term. Op. of Miss. Ethics. Comm. Op. No. 00-004-E.

A state department employee can serve as a corporate officer or member of the board of directors of a nonprofit corporation whose purpose is to promote cooperation between public and private entities regarding the area of responsibility under the jurisdiction of the state department, but is prohibited from using his official position as an employee of the state department to assist the nonprofit corporation in obtain any funding, or other pecuniary benefits, for as long as he remains an officer or a director of the nonprofit corporation. Op. of Miss. Ethics. Comm. Op. No. 00-007-E.

A former executive director of a state department can be employed by a marketing company where the marketing company has contracts with the state department in the form of master lease purchasing agreements for the acquisition of equipment and agreements for the acquisition of real properties that were approved by a state commission and executed by the former executive director; however, he is prohibited from being compensated for employment and/or other services provided to the marketing company that are related to the master lease purchase agreements and the negotiated agreements for real property acquisitions that the former executive director executed while serving as the executive director of the department. Op. of Miss. Ethics. Comm. Op. No. 00-014-E.

It is not as such a violation of the state conflict of interest laws for one spouse to be employed by the Mississippi Department of Human Services as volunteer coordinator/intake officer for the county youth court and the other spouse be employed by the county as victim/witness coordinator for the county youth court; however, each spouse would be required to totally and completely recuse himself or herself from subject matters involving the pecuniary interest of the other. Op. of Miss. Ethics. Comm. Op. No. 00-024-E.

An individual could not accept the position of deputy administrator with the state department when the division to be under the individual's supervision directly contracted with and/or funded other state department divisions' contracts with a nonprofit organization whose executive director was the individual's spouse as the individual as the deputy administrator would have direct control over the nonprofit organization's contracts with the division and indirect control over the contracts with other divisions by way of the funding coming from the division the deputy administrator would directly supervise. Op. of Miss. Ethics. Comm. Op. No. 00-026-E.

The state conflict of interest laws do not prohibit an individual from simultaneously serving on the State Board of Pharmacy and being employed by the State Department of Mental Health at the State Hospital; however, such individual would be prohibited from taking part in any matter, including licensing matters, that came before the State Board of Pharmacy that concerned, directly or indirectly, the State Department of Mental Health and/or the State Hospital or the Department's and/or Hospital's employees. Op. of Miss. Ethics. Comm. Op. No. 00-032-E.

An independent contractor with the Yazoo-Mississippi Delta Levee District can simultaneously serve as a member of the Board of Commissioners of the Yazoo Mississippi Delta Joint Water Management District, unless the board of the Yazoo Mississippi Delta Joint Water Management District in any way authorizes the board member's contract with the Yazoo-Mississippi Delta Levee District during the board member's term or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-035-E.

The state conflict of interest laws will not require an individual to resign as the city's street superintendent should he or she qualify as a candidate for the office of mayor with the city; however, the individual would not be permitted to campaign, directly or indirectly, during the hours he was being compensated by the city as its street commissioner and would not be permitted to use his employment position with the city, the city's equipment, or any other city resources to benefit his campaign for mayor. Op. of Miss. Ethics. Comm. Op. No. 00-038-E.

The executive director of a nonprofit corporation could not continue to serve on the county human resource agency's board when the county human resource agency has been awarded a HUD grant that required several local agencies to agree to partner with the county human resource agency, including the nonprofit corporation, if the grant and/or additional support agreement were authorized by the county human resource agency board during the executive director's term. Op. of Miss. Ethics. Comm. Op. No. 00-040-E.

The child of a county road manager is prohibited from being employed in the county road department due to the statutorily mandated authority given the county road manager over the employment of, compensation of, and personnel decisions pertaining to the employees of the county road department. Op. of Miss. Ethics. Comm. Op. No. 00-046-E.

A county building and grounds supervisor is prohibited from evaluating and recommending his spouse for raises and for continued employment with the county building and grounds department. Op. of Miss. Ethics. Comm. Op. No. 00-046-E.

The statute does not prohibit one spouse from being employed as the director of civil defense by a joint city and county emergency management council and the other spouse from being employed by the county board of supervisors as manager of information services when the county's information services department administers the county payroll including the payroll of the emergency management council signed by the spouse employed as the director of the civil defense. Op. of Miss. Ethics. Comm. Op. No. 00-055-E.

A former bureau manager for a state agency could be employed by an engineering consulting firm to be directly involved in an electrical generating facility project, even though the former bureau manager, as an employee of the state agency, introduced the electrical generating facility project's officials to the engineering consulting firm for the purpose of assisting them with the requisite permits and certifications, as such actions could not be considered services related to a case, decision, proceeding, or application. Op. of Miss. Ethics. Comm. Op. No. 00-063-E.

An individual could not accept the position of director of the Bureau of Building, Grounds and Real Property Management when the individual was the principal in a consulting firm that had an existing contract with a state university to provide an Americans with Disability Act Compliance Implementation Plan for submission to the Office of Civil Rights and when the Bureau of Building, Grounds and Real Property Management was the division of the Department of Finance and Administration responsible for issuing the architectural/engineering contractual agreements and securing state funding for the related building construction set forth in the Compliance Implementation Plan. Op. of Miss. Ethics. Comm. Op. No. 00-076-E.

A nonemergency transportation company contracting with a state agency can operate within a region under the supervision of a coordinator with the state agency where the coordinator has direct involvement as to which nonemergency transportation company in his region will be utilized for transports, and where the company is owned by the coordinator's father and formally employed the coordinator's spouse; however, the coordinator would be required to totally and completely recuse himself from any decision to utilize the transportation company. Op. of Miss. Ethics. Comm. Op. No. 00-079-E.

It is not a violation of the state conflict of interest laws for a volunteer fireman to serve as a county E-911 commissioner, with the understanding that the volunteer fireman is not an officer in the volunteer fire department and the E-911 commission does not contract with the volunteer fire department; however, the volunteer fireman would be required to totally and completely recuse himself from all matters concerning the volunteer fire department that came before the E-911 commission in order to avoid violating the statute. Op. of Miss. Ethics. Comm. Op. No. 00-092-E.

A county tourism commission's agreement to pay and its actual authorization and payment of funds to a restaurant for meals associated with tourism when the restaurant is owned by a member of the county tourism commission results in the member having a direct interest in a contract authorized by the county tourism commission in violation of the section. Op. of Miss. Ethics. Comm. Op. No. 00-102-E.

A state agency cannot contract with an employee to assist, train, and familiarize the individual chosen to fill the employee's position upon his retirement, but can contract with the employee after he has retired. Op. of Miss. Ethics. Comm. Op. No. 00-103-E.

It is not a violation of the state conflict of interest laws for a state employee to develop, patent, and market equipment in the industry that his or her state agency regulates when the development, pursuit of the patent, and marketing are done on the state employee's own time and the state employee does not use his or her official position with the state agency to develop and market the equipment. Op. of Miss. Ethics. Comm. Op. No. 00-111-E.

A former employee of the state department who was assigned to review grant applications for the state department cannot accept part-time employment with a private consultant to prepare and administer grant applications to be submitted for funding approval to the state department with respect to any decision or application pertaining to a grant that the former employee was directly concerned with or personally participated in as a state department employee. Op. of Miss. Ethics. Comm. Op. No. 00-115-E.

An individual employed by the Mississippi Department of Transportation can serve as a member of a county school district board of trustees; however, the individual would be required to totally and completely recuse himself from any matter coming before the county school district board of trustees concerning his state agency employer to be certain of avoiding a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-116-E.

A member of a regional commission, the members of which were made up of individuals from three states including Mississippi, was prohibited from resigning from the commission and immediately accepting the position of executive director of the commission; the current Mississippi member of the regional commission could not accept the position of executive director of the commission within one year of her resignation as a member of the commission. Op. of Miss. Ethics. Comm. Op. No. 00-129-E.

A state agency employee could, after terminating his state employment, pursue state contracts for his laundry business and janitorial business as it was very unlikely that the state employee would have been directly concerned with or would have personally participated in a state contract when it was bid and awarded after his termination date. Op. of Miss. Ethics. Comm. Op. No. 00-132-E.

A municipality can contract with a church to lease a facility to be paid for with grant funds when an employee in the state agency that administers the grant and under whose general supervision the grant falls is a member of the church and is a member of the church's board of trustees only if the state employee totally and completely recuses himself from the administration and supervision of the municipality's grant and/or the supervision of other state employees who are administering the grant. Op. of Miss. Ethics. Comm. Op. No. 00-133-E.

A state agency's director of administration, after having changed to part-time status with the state agency, could resign his part-time position with the state agency and become an independent contractor with the state agency, and a company which he helped form and by which he was employed could become an independent contractor with other state agencies. Op. of Miss. Ethics. Comm. Op. No. 00-134-E.

A state agency's director of administration, after changing to part-time status with the state agency, could form a company with another individual when the other individual was an independent contractor with the state agency just prior to their forming of the new company as long as that individual had terminated any and all of his self-employed contracts with the state agency prior to the forming of the new company. Op. of Miss. Ethics. Comm. Op. No. 00-134-E.

A state agency's director of administration, after changing to part-time status with the state agency, could become an employee of a new company formed by the director and another individual who would be providing the start-up capital for the new company and who was an independent contractor with certain other state agencies as the new company would not be a contractor, subcontractor, or vendor with the state during the period the requestor remained a public servant of the state. Op. of Miss. Ethics. Comm. Op. No. 00-134-E.

A state coordinating council and its designated selection committee could approve a bid to provide services for the establishment of a strategic plan where the bid included as a subcontractor a center at a state university and where employees of that state university were designated members of the state coordinating council by state statute as there was no information that revealed that the state university members of the coordinating council would personally or pecuniarily benefit from the selection of the bid which had the state university's center included as a subcontractor. Op. of Miss. Ethics. Comm. Op. No. 01-012-E.

A state coordinating council and its designated selection committee could approve a bid to provide services for the establishment of a strategic plan where the director and a contract employee of a state entity that has competed with the losing bidder for other projects participated in the bid selection review process and where the director of the state entity was designated a member of the state coordinating council by state statute as there was no information that revealed that the state university members of the coordinating council would personally or pecuniarily benefit from the selection of the bid which had the state university's center included as a subcontractor. Op. of Miss. Ethics. Comm. Op. No. 01-012-E.

It is not a violation of the state conflict of interest laws for an employee in a supervisory position with a state department to serve on the board of directors of a service organization's nonprofit family center without compensation where the family center has a grant issued by the state department and provides services to clients of the state department as service without compensation results in the state employee not having a material financial interest in the service organization's nonprofit family center; however, the state employee would be required to totally and completely recuse herself from all matters concerning the nonprofit service organization and the service organization's nonprofit family center, especially with regard to current and future grants issued by the state department to the nonprofit service organization and/or the service organization's nonprofit family center and state department clients under her supervision that are receiving services from the family center. Op. of Miss. Ethics. Comm. Op. No. 01-014-E.

A trustee of an economic development district established by a single county with appointed trustees is not prohibited from selling hardware and supplies to the board of supervisors of the county that established the district as an economic development district that is established by a single county with appointed trustees is a separate governmental entity from the county authorizing its establishment. Op. of Miss. Ethics. Comm. Op. No. 01-026-E.

A former employee of a state agency cannot enter into a subcontract with a private sector entity related to the private sector entity's current contract with the state agency where the former state employee was originally employed by the private sector entity and was transferred to the state agency due to a reorganization within the private sector entity after the commencement of the contractual relationship between the state agency and the private sector entity. Op. of Miss. Ethics. Comm. Op. No. 01-033-E.

An employee of the Department of Human Services can assist, without compensation, with an adoption study for a family seeking to adopt a child when the Department of Human Services must approve all adoptions coming into the state. Op. of Miss. Ethics. Comm. Op. No. 01-040-E.

A former trustee of a county economic development district is prohibited from selling land to the county as state law gives the power to purchase land to the county economic development district, and this prohibition will apply for one year from the date of the former member's resignation from the county economic development district. Op. of MIss. Ethics. Comm. Op. No. 01-046-E.

Members of a state department's advisory council can also be employees and officers of service organizations and agencies that receive funding through grants issued by the state department as a state department advisory council does not authorizes any contracts funded by public funds. Op. of Miss. Ethics. Comm. Op. No. 01-051-E.

A former employee of a state department could be employed by a company that currently had a three-year contract with the state department, but was prohibited from being compensated for employment with or services performed for the company in relation to its current contract with the state department where the former employee was on the selection committee that made the decision to award the current contract to the company. Op. of Miss. Ethics. Comm. Op. No. 01-054-E.

A public water and sewer district board was prohibited from entering into a water maintenance contract with a private company where two of the district's board members were employees of and stockholders in the private company, another district board member was an employee of the private company, and another district board member's spouse was an employee of the private company; however, the district board was not prohibited from accepting a gift from the private company of the funds and services described in the water maintenance contract. Op. of Miss. Ethics. Comm. Op. No. 01-055-E.

If a department contract results in a nonprofit corporation being a contractor, subcontractor, or vendor with the department, either by way of a grant or a health-related services agreement, then a department employee is precluded from having a material financial interest in the nonprofit corporation either as a member of the board of directors of the nonprofit corporation or as a member at large receiving money or other economic gain from the nonprofit corporation. Op. of Miss. Ethics. Comm. Op. No. 01-058-E.

A port commission could contract with a computer repair business owned by the son of a port commission employee whose position was mechanic for dock equipment as the port commission employee did not have the capacity or authority to use his position to obtain the port commission contract for his son's computer business. Op. of Miss. Ethics. Comm. Op. No. 01-063-E.

A state department's former executive director could receive compensation for performing consulting services for an agency that received department funding during his tenure as executive director where the consulting services were in areas independent of and financially unrelated, directly or indirectly, to department funding and the agency's services benefitting from department funding that was authorized, administered, and/or allotted during his tenure as the department's executive director. Op. of Miss. Ethics. Comm. Op. No. 01-066-E.

A state commission's former executive director could accept employment with a private nonprofit entity contracting with the state commission where a grant from the state commission to the nonprofit entity was totally concluded; this was with the understanding that the interim report for release of the second year of funds to the private nonprofit entity was completed prior to the former executive director's employment date or that if the interim report was not completed by such date, the former executive director was not involved on behalf of and therefore not compensated by the private nonprofit entity in relation to the interim report. Op. of Miss. Ethics. Comm. Op. No. 01-080-E.

A county election commissioner could simultaneously serve as a municipal planning committee member. Op. of Miss. Ethics. Comm. Op. No. 01-082-E.

A city council cannot employ the stepson of a department head employee upon the department head employee's recommendation to the city council that his stepson be employed by the city to work in the city department headed by the employee. Op. of Miss. Ethics. Comm. Op. No. 01-083-E.

A city council cannot employ the stepson of a department head employee to work in the city department headed by the employee as the department head employee would have supervisory power of his stepson. Op. of Miss. Ethics. Comm. Op. No. 01-083-E.

A state agency can contract with a former employee to do some of the same work that the former employee did for the state agency prior to his termination from the state agency. Op. of Miss. Ethics. Comm. Op. No. 01-084-E.

It is not a violation of the conflict of interest laws for a city's solid waste department superintendent to simultaneously serve as a county supervisor when the employing city is located within the county he will serve as a city and a county are separate governmental entities; however, the superintendent would be required to recuse himself from all matters coming before the county board of supervisors that concerned his city employer. Op. of Miss. Ethics. Comm. Op. No. 01-096-E.

A state agency is prohibited from employing a new board member's spouse as of the beginning of the upcoming new budget year. Op. of Miss. Ethics. Comm. Op. No. 01-098-E.

A state agency could contract with its former executive director to provide technical consulting assistance in the unexpected and top priority transition of certain facilities from contract management to state operation. Op. of Miss. Ethics. Comm. Op. No. 01-100-E.

A bureau manager of one state agency cannot be employed by a private firm to assist the private firm in performing its contractual obligations to another state agency if the bureau manager will have a material financial interest in the private firm. Op. of Miss. Ethics. Comm. Op. No. 01-101-E.

It was not a violation of the state conflict of interest laws for a circuit clerk to simultaneously serve as an appointed member of a water management district board; however, the clerk would be required to recuse herself from any matter concerning the county that she served that came before the water management district board and to recuse herself from any matter that concerned the water management district board that came before the circuit court or otherwise involved the duties of the circuit clerk's office. Op. of Miss. Ethics. Comm. Op. No. 01-102-E.

A member of a port commission cannot represent clients in litigation about public tidelands interests and taxes on tidelands lease parcels which may adversely affect the port commission and reduce tax revenues in which the port commission shares, even if the member recuses himself from voting and from being present at those parts of meetings of the port commission at which discussions or decisions pertaining to the litigation occurred. Op. of Miss. Ethics. Comm. Op. No. 01-107-E.

An employee of a state board that made home loans could simultaneously hold a part-time position with a real estate agency as a licensed real estate agent when the real estate agency had clients seeking loans from the state board; however, neither the board employee nor the real estate agency for which the board employee was an agent could have a contractor or subcontractor relationship with the board, and the board employee was prohibited from performing duties for the board in which he or she was involved, directly or indirectly, in the approval or disapproval of loans. Op. of Miss. Ethics. Comm. Op. No. 01-110-E.

A water management district could obtain a temporary easement from a county supervisor to perform cleaning and maintenance on a creek to correct flooding problems where the supervisor was not compensated for the easement and the county as a member of the district provided funding to the district; the easement resulted in a contract where the interests were public and not private as the ultimate and overwhelming benefit of controlling the flooding was to the public at large, public roads, and a public bridge project. Op. of Miss. Ethics. Comm. Op. No. 01-114-E.

A city could not contract with a carpet cleaning business owned by the city public works director's brother where the city public works director worked part time for his brother in the carpet cleaning business if the public works director had a material financial interest in the business. Op. of Miss. Ethics. Comm. Op. No. 01-116-E.

A member of a state board can receive eligible services (benefits) from that state board, but must recuse himself from matters coming before the board that will provide him a pecuniary benefit or that will personally assist the board member in order to avoid a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-121-E.

The only way an airport chairman could be certain to avoid violating the statute in regard to a cotton marketing company owned by his wife that contracted with a farm center to market its cotton grown on airport property was to totally and completely recuse himself as a member of the airport commission from its actions, discussions, negotiations, and decisions concerning the farm center and its lease. Op. of Miss. Ethics. Comm. Op. No. 01-126-E.

A state commission's executive director may serve as a part-time instructor to another state agency that contracts with the executive director's state commission. Op. of Miss. Ethics. Comm. Op. No. 02-066-E.

A state commission may not enter into a contract with the spouse of its director of finance and administration to coordinate a project operated by the state commission with federal funds. Op. of Miss. Ethics. Comm. Op. No. 02-068-E.

A city public utilities commissioner, who was appointed by a city board of which his father was a member, may receive compensation after his father is no longer a city board member. Op. of Miss. Ethics. Comm. Op. No. 02-070-E.

Conflict of interest laws would not prohibit a department of a state agency from participating in a public auction of another state agency. Op. of Miss. Ethics Comm. Op. No. 02-074-E.

An employee of any state agency is prohibited by § 25-4-105(3)(b) from purchasing items at an auction held by a state agency other than the state agency which employs the individual. Op. of Miss. Ethics Comm. Op. No. 02-074-E.

An employee of any state agency is prohibited by § 25-4-105(3)(b) from purchasing surplus property of his or her state agency employer at auction. Op. of Miss. Ethics Comm. Op. No. 02-074-E.

The fact of membership on the state board overseeing state-sponsored savings plans of a person who is also a registered investment broker employed by an investment company would not prevent the member's employer from participating in brokering a state savings plan to its customers as long as the member does not act as the broker/dealer for or otherwise receive compensation from customers purchasing the plan. Op. of Miss. Ethics Comm. Op. No. 02-076-E.

A state commission would not be prohibited by § 25-4-105(3)(a) from contracting with a business that is owned by the father of a state employee who is employed by the business and also works for a separate state department whose executive head is chairman of the board of the state commission seeking the contract, because the son does not have a material financial interest in the business; in addition, the conflict of interest laws would not prohibit the son from having a material financial interest in the business if the contract is let to the lowest of three legitimate bids since the commission is a separate governmental authority from the authority employing the son. Op. of Miss. Ethics Comm. Op. No. 02-078-E.

Members of a city visitors and conventions council and a county economic development authority, whose organizations established a nonprofit economic development joint venture partnership, may serve as board members of the partnership because the partnership is a quasi-governmental entity and, therefore, the members serving on the partnership board are not in violation of conflict of interest laws; however, the public officials would violate conflict of interest laws should they receive compensation as board members of or personal pecuniary benefits from the partnership. Op. of Miss. Ethics Comm. Op. No. 02-079-E.

Conflict of interest laws do not prohibit an appointed member of a statutorily created state commission, charged with regulating certain licensees in the state, from serving in a leadership role in the trade association created for the regulated licensees; however, the member must totally and completely recuse himself from all matters coming before his commission related to the trade association member, he is prohibited from trying to influence the commission through his position with the trade association, he is prohibited from having an interest, whether direct or indirect, in any contract authorized by the commission he serves during his term or for one year after the expiration of his term, and he is prohibited from using nonpublic information gained through his position as commission member that could provide a pecuniary benefit not only to himself, but also, to the trade association he serves. Op. of Miss. Ethics Comm. Op. No. 02-083-E.

An appointed member of a statutorily created state commission charged with regulating certain licensees in the state is not prohibited from serving on the political action committee (PAC) of the licensees his commission regulates, where the PAC makes monetary contributions to candidates for political office; however, the member should avoid being a party to decisions within the PAC where the PAC makes contributions to the public appointing authority that appointed the commission member to the commission. Op. of Miss. Ethics Comm. Op. No. 02-083-E.

Subsection (2) of this section and Miss. Const Art. 4, § 109 prohibit a city airport authority from entering into a contract during a commissioner's term and for one year thereafter, either as a contractor or subcontractor, with construction companies that purchase glass for an airport authority project from a business employing the commissioner's spouse. Op. of Miss. Ethics Comm. Op. No. 02-092-E.

12. Public authority.

Senior vice president of local bank depository of city housing authority may not also serve as commissioner/board member of housing authority, as he would hold prohibited interest in contracts for depositories. Op. of Miss. Ethics Comm. Op. No. 89-26-E.

Appointed member of city/county developmental authority may not become employed as auditor of same authority. Op. of Miss. Ethics Comm. Op. No. 90-021-E.

It would be violation for Board of Commissioners of a transportation authority to compensate its president for serving temporarily as its executive director as well. It matters not whether president resigned to become executive director or whether he provided temporary services in any capacity for the authority simultaneous with his service as board member, since for president to temporarily assume duties as executive director would require formal action on part of board, similarly compensation to board president would also require formal action on part of board; without order of board, employment or compensation would not be authorized; any such authorization brings in prohibitions of this section and Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 91-075-E.

Bank would violate law were it to bid on bonds issued for county's Economic Development District, where bank officer is simultaneously trustee for District. Additionally, any participation by trustee/bank officer in board deliberations or vote as concerns matter which would result in "pecuniary benefit" to trustee is prohibited; to avoid violation of provision, trustee/bank officer should totally recuse self, which would be effective as to § 25-4-105 subsection (1) but not as to Constitution Section 109 or Code subsection (2). Op. of Miss. Ethics Comm. Op. No. 91-083-E.

Law prohibits bank from purchasing bonds of public regional airport authority, where such purchase is secondary purchase following an original issuance to another institution, where member of board of airport authority has material financial interest in bank. Without order by airport authority board, airport would be unable to proceed with particular contractual arrangement described. Op. of Miss. Ethics Comm. Op. No. 92-229-E.

No violation of ethics laws occurs when Port Authority commissioner owns stock in company which is neither contractor nor subcontractor of Port Authority or otherwise contracts with Authority, despite fact that another owner of stock of company owns second corporation which contracts with Port Authority. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Commissioner of Port Authority may not own 200 shares of casino stock valued at approximately $1,000 where casino is under lease with Authority, and Authority participates on percentage basis in revenues generated by casino, and frequently deals with problems arising concerning lease. Stock owned by commissioner constitutes interest in lease contract authorized by his Authority, thus is prohibited. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Public purchase and trading of casino stock during 1993 by commissioner of Port Authority resulting in profits of over $28,000, current holdings of 500 shares with unrealized gain of over $8,000, and ownership of 600 shares in IRA of dependent relative with unrealized gain of over $12,000, each constitute violation of Ethics law. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Constitutional Section 109 and Code Section 25-4-105 subsections (2) and (3)(a) would not prohibit casino from contracting with bank depository where vice president and member of board of directors of bank depository served as commissioner of Port Authority. Authority's lease with casino does not in and of itself create interest in lease on part of commissioner, merely because his bank holds contract with casino, where there is no evidence that bank would not contract with casino if casino had not held lease with commission. Also, commissioner does not have material financial interest in casino as he does not receive any income or benefit from it. Nevertheless, commissioner-banker should not vote on matters affecting casino since his bank could be indirectly affected which in turn could cause commissioner to violate subsection (1), thus commissioner ought to recuse self from casino matters coming before Authority. Op. of Miss. Ethics Comm. Op. No. 93-118-E.

Ethics laws prohibit Industrial Development Authority from contracting with bank to sell it land when one of IDA commissioners is employed by bank. While recusal on part of commissioner in deliberations and voting on board of which he is member would remove potential violation of subsection (1), it would not remove prohibited interest in violation of subsection (2) and Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 93-173-E.

Since the issuance of a permit or license by a municipal board does not constitute a government contract, a board member does not violate conflict of interest laws by voting in an action to approve a variance in zoning relating to a permit for a company, even though the member has a pecuniary interest in that company. However, the board member was cautioned not to use his official position to obtain pecuniary benefits for himself, and recusal from matters concerning his business was discussed. Op. of Miss. Ethics Comm. Op. No. 94-128-E.

A state district's board member's appointment to an advisory board of a bank that serves as the depository for the state district results in the board member having a prohibited interest in any contracts between the bank and the district entered into during his term and for one year thereafter in violation of Constitutional Section 109 and Code Section 25-4-105(2). Also, recusal and de minimis interest are addressed. Op. of Miss. Ethics Comm. Op. No. 95-073-E.

A trustee of a county economic development district may not be awarded a bid on a construction project financed by bond proceeds from the sale of general obligation bonds issued by the county board of supervisors at the request of the county economic development district as such a contract violates Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-078-E.

Constitutional Section 109 and § 25-4-105(2) prohibit the economic development authority's purchase of county club property when some of its members are stockholders in the county club. Op. of Miss. Ethics Comm. Op. No. 96-085-E.

An economic development authority/association is a quasi-governmental entity, and having elected officials serving on its board when their respective governmental entities are funded does not as such violate the conflict of interest laws. However, the officials were cautioned regarding Constitutional Section 109, § 25-4-105(1) and (2) and § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-117-E.

A business co-owned by a county supervisor selling to an industry located in the county's industrial park is not as such a violation of the conflict of interest laws if no contract has been authorized by the board of supervisors during the supervisor's term or for one year thereafter. However, the supervisor was cautioned regarding Constitutional Section 109, § 25-4-105(1) and (2), and § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-120-E.

A housing authority employee charged with enforcing housing quality standards on rental property owners receiving rent payments from the housing authority may not simultaneously be employed to manage the properties of one such rental property owner. Op. of Miss. Ethics Comm. Op. No. 98-018-E.

An individual may simultaneously serve as a board member of a public authority and a public nonprofit corporation, and receive per diem from both, even though the authority and the corporation contract with each other, where the per diem for each board position is set forth in law or by a resolution; however, should his compensation from the public authority be authorized by funds or contracts from the public nonprofit corporation or the reverse, such simultaneous service would be prohibited. Op. of Miss. Ethics Comm. Op. No. 98-037-E.

The city may not appoint an insurance agent to the zoning board and still purchase insurance from that agent based upon proposals for insurance, in accordance with the purchasing laws, his being the lowest proposal. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

A city may lease parking space from the son of a member of the city housing authority. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

A board member appointed to a city board, commission or authority may resign his or her public position and immediately contract with the city's governing authority. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

It is not a violation of the state conflict of interest laws for a housing authority employee/manager to employ in his or her private business a resident of the housing authority site he or she manages. Op. of Miss. Ethics Comm. Op. No. 98-074-E.

A current employee of one state governmental authority may not be hired as an independent contractor by another state governmental authority. Op. of Miss. Ethics Comm. Op. No. 98-120-E.

It is not a violation of the state conflict of interest laws for a regional housing authority to sell a single family house to the sister of one of the regional housing authority's commissioners if the regional housing authority commissioner has no personal or pecuniary interest, direct or indirect, in his or her sister's contract with the regional housing authority to purchase the single family dwelling. Op. of Miss. Ethics Comm. Op. No. 98-139-E.

A housing authority may not contract with a security company owned by one of its employees and the employee's spouse, even if the housing authority determines that the security company's bid is the lowest and best bid. Op. of Miss. Ethics Comm. Op. No. 99-102-E.

A board member of a county port authority is prohibited from entering into a memorandum of understanding with the county port authority as a property owner who agrees to acquire the county port authority's water and sewer services which may be available by way of a proposed water and sewer extension, as such a memorandum of understanding would not have as its purpose an indemnity agreement with the single objective of protecting the financial interest of the port authority and, therefore, the interests involved are not solely interests of a public nature. Op. of Miss. Ethics. Comm. Op. No. 99-110-E.

Until such time as a court of competent jurisdiction rules that the State Constitution and the Ethics in Government law are preempted by the amended Section 2 of the United States Housing Act of 1937 (42 U.S.C.S. § 1437), an individual assisted by a public housing authority who is appointed to the board of that same public housing authority will be deemed to be in violation of the statute at such time as his or her lease agreement is approved by the public housing authority board during his or her term or with in one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-059-E.

An industrial development authority was prohibited from purchasing commodities, equipment, and/or furniture from a business in which one of the industrial development authority board members held an ownership interest and this prohibition would apply during the board member's term and for one year thereafter; further, an abstention or recusal by the board member would not prevent a violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 00-072-E.

An individual employed by the state port authority can simultaneously serve as a member of the city council in the city where the state port authority is located, with the understanding that the state employee could not perform the duties and responsibilities of a city council member when on duty with the state and being paid by the state, i.e., the state employee would be required to request and receive leave from the state agency when performing his or her duties and responsibilities as a city council member. Op. of Miss. Ethics. Comm. Op. No. 00-112-E.

It is not a violation of the state conflict of interest laws for an employee of a regional housing authority to serve as the town's mayor, with the understanding that the regional housing authority receives no funding of any kind or no additional bond issuing authority from the mayor and board of aldermen during the authority employee's term and for one year thereafter; such funding would result in the authority employee as mayor having a prohibited interest by way of his employment contract with the regional housing authority in violation of the section. Op. of Miss. Ethics. Comm. Op. No. 01-048-E.

An individual that owned and operated a solid waste disposal company that used the landfill of a solid waste management authority could not serve on the board of the authority as a line of credit arrangement between the authority board and the company owned by the board member was an agreement to which the solid waste authority board was a party. Op. of Miss. Ethics. Comm. Op. No. 01-105-E.

A regional housing authority may contract for security services with businesses controlled by individuals who serve as constable, deputy sheriff, city police officer, or a member of another city housing authority. Op. of Miss. Ethics. Comm. Op. No. 02-038-E.

The child of a housing authority commissioner, who lives with the commissioner, may not be employed by the housing authority; the child of a housing authority commissioner may be employed by the housing authority only if the commissioner's child is totally and completely financially independent from the commissioner. Op. of Miss. Ethics. Comm. Op. No. 02-062-E.

Public board members serving on multiple governmental or quasi-governmental boards would be in violation of § 25-4-105(5) should they use non-public information gained through their position as board members that could provide a pecuniary benefit not only to themselves, but also to the governmental or quasi-governmental entities they serve. Op. of Miss. Ethics Comm. Op. No. 02-079-E.

A county economic development authority is not prohibited by Miss. Const. Art. 4, § 109 and § 25-4-105(2) from contracting with a nonprofit economic development joint venture partnership to provide marketing and management services; however, the partnership board members, who are also county economic development board members, would be prohibited by those constitutional and statutory provisions from having any private pecuniary interest in the contract between the two governmental entities. Op. of Miss. Ethics Comm. Op. No. 02-079-E.

13. School, board of education.

It is violation for school board member's spouse to be secretary with school county food service, despite that a salary is paid entirely from federal funds. Conflict can be resolved only by one or other spouse resigning from position. Furthermore, spouse cannot be paid as long as member remains on school board and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 88-55-E.

Member of board of trustees of consolidated school district had material financial interest in auto parts company which employed him such as to constitute an interest in any contract between the company and the board of which he is a member (assuming that he earns in excess of $100,000 annually, since it was not stated); therefore any sales of goods or services by subject's employer to his school district would cause subject to violate Constitution § 109 and Code § 25-4-105. Op. of Miss. Ethics Comm. Op. No. 88-156-E.

Where daughter or daughter-in-law of county school board member sought to be employed as teacher's aide or substitute teacher by same county, if she was financially dependent upon school board member then such employment would constitute violation of section, as school board member would have an interest in her employment, however if she was free from member's control and support then provisions would not be violated. Op. of Miss. Ethics Comm. Op. No. 88-184-E.

School board member may not be employed by major supplier of school district. Op. of Miss. Ethics Comm. Op. No. 89-34-E.

Candidate if elected to county school board may possess leasehold interest in Sixteenth Section land negotiated before becoming candidate, inasmuch as all transactions for leasehold interest occurred prior to candidacy and required no action on part of county school board other than acceptance of lease payment which is ministerial in nature. However, should any intervening events such as new statutory requirements or sale of leasehold interest occur requiring consideration and/or action by county school board, then section would become pertinent, and recusal by candidate would not prevent violation of provision. Furthermore candidate is cautioned not to participate in any board action affecting leasehold interest, in order to avoid application of section. However, recusal would be effective in this regard. Op. of Miss. Ethics Comm. Op. No. 89-63-E.

Ethics laws prohibit spouse of member of county board of education from being employed as school bus driver for county. Op. of Miss. Ethics Comm. Op. No. 89-115-E.

It would be conflict of interest for school board member to simultaneously be major stockholder in bank depository of same school district; where bank depository was authorized prior to board member's bank's purchase of second bank involved, violation occurs but it is problematical whether court would order any penalty. However, penalties should be in order should school board again select purchased bank as depository at end of current deposit contract year. Op. of Miss. Ethics Comm. Op. No. 90-028-E.

No violation exists where sister of prospective appointee as member of school board has been principal and long-time employee of one of schools served by such board. Sister is not included in definition of "relative" in § 25-4-103(p). Op. of Miss. Ethics Comm. Op. No. 90-098-E.

Law does not prohibit employee of one school district from becoming member of board of trustees of another adjoining school district provided employee recuses self from any deliberations or actions in the first school district that concern second school district. Op. of Miss. Ethics Comm. Op. No. 91-001-E.

Ethics violation arises where state legislator becomes employed by local school district within one year of expiration of his term. Op. of Miss. Ethics Comm. Op. No. 92-095-E.

Ethics in Government law may be violated should supervisor and his immediate family serve as teachers in same county. If supervisor or "relative", meaning spouse, child, or parent, became teacher in city school system, no per se violation of ethics law would occur; city school system is separate authority from that of county. Should supervisor or "relative" become employed by county school system, where all of local funding portion or of salaries under teaching contract comes from mandatory local tax levies, again no violation would occur. Where portion of salary derived by public school teacher under teaching contract or that of a "relative" comes from discretionary local tax levies, such teaching contract would violate Section 109 of state Constitution and Code Section 24-4-105, subsection (2), while teacher is member of board of governing authority which makes such tax levies or within one year after term on governing board expires. Op. of Miss. Ethics Comm. Op. No. 92-103-E.

Violation arises where spouse of cafeteria manager of county school district is elected member of same district's school board. Violation would occur when board rehires its employees each year. Op. of Miss. Ethics Comm. Op. No. 92-165-E.

Ethics in Government laws prohibit county school board member from contracting with corporation as to sale of sixteenth section timber when trustee is employed by corporation. Subsection (3) paragraph (a) would be violated as such trustee/employee would have a material financial interest in a contract with governmental authority of which he is member. However, trustee whose spouse was corporate employee would not violate same provision. Op. of Miss. Ethics Comm. Op. No. 92-173-E.

Both county school board trustee who is employed by corporation and trustee whose spouse is employed by corporation possess "interest, direct or indirect" in contract authorized by school board with corporation as to sale of sixteenth section timber such as to call into application § 24-4-105 subsection (2). Op. of Miss. Ethics Comm. Op. No. 92-173-E.

Violation arises upon continued employment of vocational counselor of county school district after he is sworn as elected member of county school board. Counselor should either resign elected position or resign counselor position. Op. of Miss. Ethics Comm. Op. No. 92-200-E.

Superintendent of school district may not accept honorarium from staff development session for an agency when his salary and expenses are paid by his own district. Op. of Miss. Ethics Comm. Op. No. 93-132-E.

Under the provisions of Section 25-4-101, an alderman who is also a teacher/coach in the school district should recuse himself from matters concerning the appointment of a board member who authorizes his employment contract each year, in order to reduce suspicion or any sense of impropriety. The alderman should leave the room or area where the discussions and actions are taking place, and the minutes of the meeting should reflect his absence. A potential violation of Section 25-4-105(1) exists if a vote or discussion by the alderman would result in pecuniary benefit to him. Op. of Miss. Ethics Comm. Op. No. 94-013-E.

A non-officer employee of a bank, who also serves as a member of the school board, would have an prohibited pecuniary interest in a contract by the board authorizing the bank as the depository of the school district. Op. of Miss. Ethics Comm. Op. No. 94-048-E.

A county supervisor who becomes an employee of a school district within the county would hold an inherent interest in contracts with the school district authorized by the board of which he is a member, thereby violating Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 94-050-E.

A county board of education member may not lease sixteenth section land managed by the school board of which he is a member, as that action constitutes approval of a contract by the member's board during that member's term. Neither recusal or abstention from voting will prevent a violation of ethics laws. Op. of Miss. Ethics Comm. Op. No. 94-140-E.

An exception found in Section 25-4-105(4)(d) allows a municipal school superintendent to serve on the board of directors of the electrical power utility company, since the company has exclusive rights to provide the school district with its electricity. The superintendent was advised, however, not to use his or her official position for personal pecuniary benefits, in violation of Section 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 94-154-E.

The police chief of one municipality may accept an appointment to the board of a school district of another municipality. Op. of Miss. Ethics Comm. Op. No. 95-011-E.

A school district may not contract with a health clinic to provide medical assistance for the school's students when members of the school board are or were employees of the health clinic. Op. of Miss. Ethics Comm. Op. No. 95-035-E.

A school district may not contract with a health clinic to provide medical assistance for the school's students when the school district's Chapter I coordinator is the spouse of the health clinic's director if the Chapter I coordinator has a material financial interest in the health clinic's contract with the school district. Op. of Miss. Ethics Comm. Op. No. 95-035-E.

A parent may be an elected member of a school and a child an elected superintendent of the same school district, but the parent must recuse himself from the consideration of the superintendent/child's salary. Op. of Miss. Ethics Comm. Op. No. 95-091-E.

An elected county superintendent of education may accept employment with the school district after the expiration of the superintendent's term without being in violation of Constitutional Section 109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 95-092-E.

A husband and wife, who are both teachers, may sell educational video materials to school districts other than to their school district employers. It is a violation of Section 25-4-105(3)(a) for them to sell to their school district employers. Op. of Miss. Ethics Comm. Op. No. 95-100-E.

A public school teacher is prohibited by the conflict of interest laws from selling through a marketing firm a gradebook the teacher copyrighted to the teacher's school district employer but not prohibited from selling to other state school districts. However, the teacher should be cautioned regarding Constitutional Section 210 which prohibits public school teachers from selling any "books" to any state school district. Op. of Miss. Ethics Comm. Op. No. 95-119-E.

A school district's purchasing through a term bid with an auto parts store that employs a board member-elect after the board member-elect is sworn into office violates Constitutional Section 109 and Code Section 25-4-105(2) and (3)(a). Op. of Miss. Ethics Comm. Op. No. 95-143-E.

An individual appointed by the city council to the city school board whose daughter is employed by the school district when the daughter and her child live in the individual's household results in a violation of Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 96-028-E.

An individual serving on a municipal separate school board and on a municipal election commission should recuse himself from any action coming before the municipal election commission regarding a school bond issue election. The individual was also cautioned regarding § 25-4-101 and § 25-4-105(5). Op. of Miss. Ethics Comm. Op. No. 96-050-E.

A school board may employ the sons of one of its members as an architect and as an attorney if they are financially independent from the father. However, the board was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-081-E.

A former state employee is prohibited by subsection (3)(e) from being compensated by a company in relation to the school district's contract where he was directly concerned and personally participated in the school district's performance-based proceeding and in the school district's application to the state agency division for assistance; however, the former state employee may advise the school district's selection committee of the grant money that might be available to the school district, unless the former state employee used his official position with the state agency division before terminating to gain an advantage in obtaining the grant in his new position with the company in violation of subsection (1). Op. of Miss. Ethics. Comm. Op. No. 97-154-E.

The spouse of a division director of a state department may not sell educational products to local school districts when the state department accepts the bids, awards the contracts and provides the funding for the educational products. Op. of Miss. Ethics. Comm. Op. No. 97-162-E.

An officer of a bank may not be appointed to the State Board of Education if another subsidiary of the bank's holding company intends to offer investment vehicles for State Department of Education funds or minimum education funds allocated by the State Department of Education to local school districts after the date of the bank officer's appointment to the State Board of Education. Op. of Miss. Ethics. Comm. Op. No. 97-165-E.

An officer of a bank may not be appointed to the State Board of Education if the bank intends to participate in bond offerings by the State Department of Education and to do other business with the State Department of Education after the date of the bank officer's appointment to the State Board of Education. Op. of Miss. Ethics. Comm. Op. No. 97-165-E.

An architect may contract to provide professional services to a municipal school district when the architect's parent is a member of the board of aldermen that appoints the school district's board members. Op. of Miss. Ethics Comm. Op. No. 98-006-E.

A municipal council member, who is an employee of the municipal school district, is always advised to totally and completely recuse himself or herself from matters involving the appointment of municipal school board members in order to comply with the public policy set forth in § 25-4-101 and to avoid a potential violation of § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 98-013-E.

A municipal council member, who is an employee of the municipal separate school district, must always totally and completely recuse himself or herself from matters involving the appointment of members to the municipal separate school board of trustees in order to comply with the public policy set forth in § 25-4-101 and to avoid a potential violation of subsection (1) of this section. Op. of Miss. Ethics Comm. Op. No. 98-023-E.

A former director of a division of the state agency that the school districts and other governmental entities were required to apply to for assistance in regard to certain Request for Proposals may act as a representative for a company responding to these requests, so long as the employee, had no dealings with the school districts or other governmental entities relative to a present or a further contract related to such Requests for Proposals during his state tenure. Op. of Miss. Ethics Comm. Op. No. 98-027-E.

A former teacher who is currently receiving state retirement benefits as a retired teacher with the school district is not prohibited from serving as a duly elected member of the school board of trustees. Op. of Miss. Ethics Comm. Op. No. 98-042-E.

A state university may re-employ an individual as the head athletic trainer even though the individual's child is employed as a senior athletic trainer with the state university so long as the state university removes all authority from the individual regarding the individual's control and responsibility over the child's annual salary and/or other pecuniary benefits. Op. of Miss. Ethics Comm. Op. No. 98-048-E.

A school board member must recuse himself from the school board's actions involving the school's sixteenth section timber when the school board member's employer imber company is bidding on the timber to be sold. Op. of Miss. Ethics Comm. Op. No. 98-050-E.

A county school board may not employ a board member's son if the member is directly or indirectly interested in the son's employment; in order for the board member to not be interested in the son's employment, the parent and the child must be mutually financially independent. Op. of Miss. Ethics Comm. Op. No. 98-052-E.

The spouse of a candidate for county superintendent of education may not remain employed by the county school district if the candidate is elected to the position of county superintendent since the spouse's position requires annual approval by the county superintendent. Op. of Miss. Ethics Comm. Op. No. 98-069-E.

A company owned by the sons of a candidate for the county school board, and that also employs the candidate, may not continue to do business with the county school district and the county if the candidate is elected to the county school board where the candidate has a material financial interest in the company; however, if the candidate were to resign from his sons' company and give up all other personal and pecuniary benefits, direct or indirect, before taking office as a school board member, then the company could continue contracting to perform work for the school district, so long as the candidate recused himself from all matters pertaining to the company. Op. of Miss. Ethics Comm. Op. No. 98-073-E.

It is not a violation of the state conflict of interest laws for a company to sell its goods or services to a community college when its salesperson is the son of an employee of the college, so long as the college's employee has no authority, direct or indirect, over the governmental entity's purchasing process. Op. of Miss. Ethics Comm. Op. No. 98-090-E.

A service course may be taught to other governmental entities by a state academy instructor, or instructor supervisor, outside the state academy for compensation pursuant to the exception to the subsection (3)(a) prohibition set forth in subsection (4)(h), as long as the teaching is done in a way that the instructor would not violate subsection (1). Op. of Miss. Ethics Comm. Op. No. 98-098-E.

Article IV, Section 109 of the Constitution and subsections (2) and (3)(a) of this section, prohibit a school district from purchasing telephone equipment from a company that employs two of the school district's five board members. Op. of Miss. Ethics Comm. Op. No. 98-109-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a school district from purchasing telephone equipment from a company that obtained the telephone equipment for the school district's contract from another company that employs two of the school district's five board members. Op. of Miss. Ethics Comm. Op. No. 98-109-E.

It is not a violation of the state conflict of interest laws for a municipal school board member to serve simultaneously for the county in which the school district is located as county tax collector. Op. of Miss. Ethics Comm. Op. No. 98-119-E.

It is not a violation of the conflict of interest laws for a public school employee to simultaneously serve as a county supervisor when the employing school district is located within the county he will serve. Op. of Miss. Ethics Comm. Op. No. 98-130-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section will prohibit a school district's board from entering into a new contract with a newly elected board member's spouse once he is sworn in as a member of the school board; this prohibition will apply for the period that the newly elected school board member remains on the board and for one year thereafter; further, during the remainder of the spouse's current contract, the newly elected school board member should totally and completely recuse himself from any matter directly or indirectly concerning his spouse's position or compensation. Op. of Miss. Ethics Comm. Op. No. 98-131-E.

Article 4, Section 109 of the Constitution and subsection (2) of this section prohibit a school district's board from amending the current or entering into a new "Cooperative Agreement to Provide Vocational Education for High School Students" with a community college that employs a newly-elected school board member, once the newly-elected school board member is sworn in as a member of the school board; this prohibition will apply for the period that the newly elected school board member remains on the board and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 98-131-E.

It is not a violation of the conflict of interest laws for a public school teacher to simultaneously serve as a county supervisor when the employing school district is located within the county he will serve; however, the teacher will be required to recuse himself from all matters coming before the county board of supervisors that concern his school district employer. Op. of Miss. Ethics Comm. Op. No. 98-134-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section absolutely prohibit a newly elected school board member's fuel service center from selling gasoline or diesel to the county school district for its school buses or for any other purpose during his term and for one year after he leaves office. Op. of Miss. Ethics Comm. Op. No. 98-136-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section prohibit a school board from entering into a new employment contract with a newly elected school board member's spouse, even where the spouse is employed in a non-certified position; however, it is possible, although not prudent, for a newly elected school board member's spouse to complete her current contract without the newly elected school board member having violated the state conflict of interest laws if the newly elected school board member totally and completely recuses himself from any matter coming before the school board concerning his spouse during the remaining period of her current contract. Op. of Miss. Ethics Comm. Op. No. 99-010-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section absolutely prohibit a school board member from taking pictures at school activities, notwithstanding that the pictures are paid for by the students and not the school district, if the authorization to take such pictures and charge the students participating in the activities for the pictures stems from an agreement, including an implied agreement, between the school district and the school board member or the school district and the entity sponsoring the activities on school district property. Op. of Miss. Ethics Comm. Op. No. 99-034-E.

A county school district may not employ the son-in-law of the county superintendent of education as its network computer technician. Op. of Miss. Ethics Comm. Op. No. 99-053-E.

A county school board member's acceptance of three golf clubs by way of a random drawing by an exhibitor at a national school board convention where the board member registered for the drawing along with countless others attending the national convention did not cause the board member to have a prohibited interest in the exhibitor's contract with the county school district. Op. of Miss. Ethics Comm. Op. No. 99-056-E.

A county school board member could retain a portable computer he received from an exhibitor at a national school board convention when he registered at the exhibitor's booth for the randomly selected computer. Op. of Miss. Ethics Comm. Op. No. 99-056-E.

A local school district may not contract with a bank in which one of the school board members is interested. Op. of Miss. Ethics Comm. Op. No. 99-063-E.

A local governmental entity's board member, including a county supervisor, a municipal board member and/or a school board trustee, is absolutely prohibited from contracting with his or her governmental entity during the board member's term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 99-067-E.

An engineer may not contract with a school district when the engineer's firm is located in a building rented from one of the school board members; the term of the prohibition is the school board member's term, and for one year thereafter, while the engineer is the school board member's tenant. Op. of Miss. Ethics Comm. Op. No. 99-070-E.

It is not as such a violation of the state conflict of interest laws for a state employee to serve as a member of a school district board of trustees. Op. of Miss. Ethics Comm. Op. No. 99-074-E.

An individual employed as a teacher by the school district may not be a lessee of sixteenth section land from the school district. Op. of Miss. Ethics Comm. Op. No. 99-076-E.

It is not a violation of the state conflict of interest laws for individuals associated with the same company to serve simultaneously as members of the municipal school board even though one of the appointees is subordinate to the other within the company. Op. of Miss. Ethics Comm. Op. No. 99-079-E.

It is not a violation of the state conflict of interest laws for an employee of a state university or the employee's spouse to also contract with a city. Op. of Miss. Ethics Comm. Op. No. 99-081-E.

It is not as such a violation of the state conflict of interest laws for an individual employed by the Mississippi Department of Education as a school attendance officer to serve as a county supervisor or a member of a county school board of trustees. Op. of Miss. Ethics Comm. Op. No. 99-083-E.

It is not as such a violation of the state conflict of interest laws for a county prosecuting attorney to simultaneously serve as a member of the school district board of trustees. Op. of Miss. Ethics Comm. Op. No. 99-086-E.

A school district may not sell property to a rural water association when the president of the school board is also the president of the rural water association, as a school board member is prohibited from having an interest, direct or indirect, in a contract authorized by the school board of which he is a member during his term or for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 99-111-E.

Employees of a state university are prohibited from making travel arrangements with a travel agency owned by an employee of the state university if the travel arrangements will be paid for by the state university with public funds, unless only two or fewer commercial sources for the service or goods are reasonably available, provided such transactions comply with the public purchases laws. Op. of Miss. Ethics. Comm. Op. No. 00-008-E.

A school board member cannot be indirectly employed and compensated by a bank as an agent for an insurance company owned by the bank where the bank is the school district's depository or otherwise contracts with the school district, and a recusal or abstention by the board member would not alter the result. Op. of Miss. Ethics. Comm. Op. No. 00-009-E.

It is not as such a violation of the state conflict of interest laws for school attendance officers employed by the Department of Education to be employed part-time by a school district by way of a federal grant funded through the Department of Education. Op. of Miss. Ethics. Comm. Op. No. 00-011-E.

A school attendance officer employed with the Department of Education can be employed and/or compensated by the Board of Community Colleges through a federal grant as the Department of Education and the Board of Community Colleges are separate authorities of the state. Op. of Miss. Ethics. Comm. Op. No. 00-011-E.

A public school board member's spouse is prohibited from being employed, or from contracting in any other way, with his or her school district during the school board member's term and for one year thereafter, and a recusal or abstention by the school board member will not alter the result. Op. of Miss. Ethics. Comm. Op. No. 00-020-E.

A newly elected/appointed public school board member's company is prohibited from selling to the public school district during the school board member's term and for one year thereafter, and a recusal or abstention by the school board member will not alter the result. Op. of Miss. Ethics. Comm. Op. No. 00-020-E.

A newly elected/appointed public school board member's spouse is prohibited from retaining her employment position with the public school district, as a violation of the statute will occur once the newly elected/appointed public school board member's spouse is paid with funds approved in a budget authorized by the public school district's board of which he is a member. Op. of Miss. Ethics. Comm. Op. No. 00-020-E.

The spouse of a newly elected superintendent of education cannot remain employed with a community college in a work study program made available through the spouse's application for financial assistance from the community college as a full-time student once the funding for the program and/or the spouse's continued employment through the program are authorized by the board of trustees during the trustee/superintendent's term and/or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-025-E.

A public school teacher can be involved in a school supply business that proposes to do retail and mail order business with public school districts, but not if such business proposes to do business with the school district that employs the public school teacher. Op. of Miss. Ethics. Comm. Op. No. 00-028-E.

The statute does not prohibit a school board member's involvement in the employment by the school district of his brother or half-brother as neither would be considered a relative for purposes of the state conflict of interest laws, unless the school board member received a personal and/or pecuniary interest by way of the school district's employment of his brother or half-brother. Op. of Miss. Ethics. Comm. Op. No. 00-053-E.

The spouse of a state superintendent of education was not prohibited from having a contract or an interest in a contract with a public school district; however, the superintendent would be required to totally and completely recuse himself from any matter coming before his department or his board that concerned his spouse and/or the education consulting group for which she was a subcontractor, especially with regard to approval, review, or funding of the spouse's contracts with public school districts and/or the educational consulting group's contracts with public school districts in which the spouse was a subcontractor. Op. of Miss. Ethics. Comm. Op. No. 00-058-E.

A county school district would be prohibited from contracting with a county school board member's child or the child's business to provide screen printing supplies, services, and/or materials to the county school district if the school board member was directly or indirectly interested in the child's contract; in order for the school board member to avoid a violation of the section, the school board member's child would have to be totally and completely financially independent from the school board member and the school board member would be required to have no interest, direct or indirect, in the child's contract with the county school district; further, the school board member could not in any way be involved in the county school board's decision to contract with his child or the child's business. Op. of Miss. Ethics. Comm. Op. No. 00-064-E.

A board member of a county school district could not simultaneously serve as the interim superintendent of a municipal school district located with the county that the county school district serves when the two school districts jointly operated and funded a bus shop and jointly funded an alternative school administered by the municipal school district as the county school district's funding of the contracts for the joint operation of the two facilities, especially the alternative school, which was administered by the municipal school district, included, either directly or indirectly, the costs associated with the administration of the two facilities and, therefore, the board member would have a personal and pecuniary benefit in the contracts for the joint operation of the two facilities, especially the alternative school if he accepted the position of interim superintendent with the municipal school district. Op. of Miss. Ethics. Comm. Op. No. 00-075-E.

School board members and their spouses and dependent children are prohibited from purchasing surplus mobile classrooms from the school district. Op. of Miss. Ethics. Comm. Op. No. 00-084-E.

School board members and their spouses and dependent children are prohibited from purchasing surplus equipment from the school district at auction; however, relatives of school board members other than spouses and dependent children are not so prohibited. Op. of Miss. Ethics. Comm. Op. No. 00-106-E.

A school district could contract with a windshield repair business owned by the spouse of one of the school district's secretaries as the school district's secretary had no interest in the windshield repair business except for the fact that her spouse was the sole owner and proprietor of the business; however, if the secretary personally received an income from the spouse's windshield repair business or if she served as an officer, director, or partner in the business or if she obtained any direct or indirect interest in the spouse's windshield repair business, such as working in the business or providing it funding through a loan or investment, then the secretary would have a personal and pecuniary interest in the windshield repair business and a violation of the statute would result. Op. of Miss. Ethics. Comm. Op. No. 00-117-E.

It is a violation of the state conflict of interest laws for a school board member to sell prepaid legal service agreements to the employees of the school district on a payroll deduction plan under the school district's cafeteria plan; the violation of the section 109 will occur when the school board approves the cafeteria plan and its related agreements during the school board member's term or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-130-E.

It is not a violation of the conflict of interest laws for a municipal school district employee to simultaneously serve as an alderman of the municipality where the school district employing him or her is located; however, such a public servant must totally and completely recuse himself or herself from subject matters concerning the school district. Op. of Miss. Ethics. Comm. Op. No. 01-003-E.

It is not a violation of the state conflict of interest laws on the part of the city's governing authority for them to appoint an individual as a member of the municipal school district's board of trustees when that individual's spouse is a noninstructional employee of the municipal school district; however, when a contract of employment with the spouse is renewed or changed by the municipal school board once the proposed appointee becomes a member of the municipal school board, a definite conflict of interest will arise. Op. of Miss. Ethics. Comm. Op. No. 01-006-E.

A newly appointed school board member could continue to serve if his spouse resigned her noninstructional position with the school district at the end of the current school year and began drawing her state retirement benefits and where he was also drawing his state retirement benefits as a former employee of the school district. Op. of Miss. Ethics. Comm. Op. No. 01-011-E.

A newly appointed school board member's spouse could not remain employed in a noninstructional position with the school district as the school board was prohibited from entering into a new employment contract with the school board member's spouse. Op. of Miss. Ethics. Comm. Op. No. 01-011-E.

A school district could purchase flashlight batteries from a store which was managed by the spouse of a secretary employed by the school district as the school secretary had no direct or indirect control over purchases from the store managed by her spouse. Op. of Miss. Ethics. Comm. Op. No. 01-018-E.

A school district could contract with a substitute teacher's spouse to cut down trees, repair a fence, run the clock at basketball games, or hold the yard marker indicators at football games as the substitute teacher was not in a position with the school district to have any direct or indirect control over the contracts between the school district and her spouse whereby he was engaged to provide such services. Op. of Miss. Ethics. Comm. Op. No. 01-018-E.

A school district could contract with the school secretary's spouse to cut down trees, repair a fence, run the clock at basketball games, or hold the yard marker indicators at football games as the school secretary had no direct or indirect control over the contracts between the school district and her spouse whereby he was engaged to provide such services. Op. of Miss. Ethics. Comm. Op. No. 01-018-E.

A school district's board of trustees is prohibited from entering into a memorandum of agreement with a nonprofit organization so that the nonprofit organization can perform its subgrantee responsibilities under a grant from the Mississippi Department of Human Services where the nonprofit organization's executive director is the spouse of one of the school district's trustees, and this prohibition will apply during the school district trustee's term of office and for one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-050-E.

Where one spouse is employed as a school district's assistant business manager and the other spouse is employed as the school district's assistant payroll clerk, the assistant business manager spouse is prohibited from taking any actions that would result in his spouse as the school district's assistant payroll clerk retaining and/or receiving a pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 01-053-E.

A school district can employ its business manager's brother as assistant business manager and its business manager's sister-in-law as assistant payroll clerk as a brother and a sister-in-law are not relatives for purposes of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-053-E.

It is not a violation of the conflict of interest laws for an elected school board member to simultaneously serve as a mayor, even though the municipality the mayor serves is located within the school district; however, the individual would be prohibited from directly or indirectly having an inherent interest and/or receiving a personal or pecuniary benefit from the school district or the municipality as a result of any contracts existing between the two governmental entities authorized during his terms of office or within one thereafter. Op. of Miss. Ethics. Comm. Op. No. 01-071-E.

A school board is prohibited from authorizing a contract with a bank to serve as its depository, or for other purposes, when a school board member has a spouse that the bank employs. Op. of Miss. Ethics. Comm. Op. No. 01-072-E.

A school district can contract with a tire company to provide the school district with its school bus tires where the company has its new service trucks used in its tire business retrofitted with equipment by another company that employs one of the school district's board members who is its employee that actually does the retrofitting of the tire company's service trucks as the school board member's employing company's retrofitting of the tire company's new trucks is not a subcontract to the school district's proposed contract with the tire company to provide school bus tires. Op. of Miss. Ethics. Comm. Op. No. 01-074-E.

There is no violation of the statute where the spouse of a newly appointed community college president is a teacher with the community college for the upcoming school year pursuant to a teaching contract recommended to the board of trustees and signed by an interim president prior to the new president's appointment. Op. of Miss. Ethics. Comm. Op. No. 01-085-E.

It is not a violation of the conflict of interest laws for a county school board member to simultaneously serve as a county road manager, with the understanding that there is no statutory authority for the county school system to fund the county road department. Op. of Miss. Ethics. Comm. Op. No. 01-089-E.

A county school board member could not be employed by the county sheriff's department as a county school resource officer where the county school board of which he was a member had entered into an agreement to pay the salary of the county school resource officer the fourth year in compliance with a grant retention requirement. Op. of Miss. Ethics. Comm. Op. No. 01-091-E.

A council member cannot participate and/or vote on the appointment of a municipal school board trustee when the council member's spouse is employed by the same municipal school district if the vote and/or deliberation by the council member will result is a pecuniary benefit to the council member's spouse. Op. of Miss. Ethics. Comm. Op. No. 01-117-E.

A school board may not enter into a new employment contract with the spouse of a newly elected school board member once the board member takes office; however, it is possible, although not prudent, for the board member's spouse to complete her current employment contract without the board member violating the state conflict of interest laws. Op. of Miss. Ethics. Comm. Op. No. 01-125-E.

A community college may purchase adjoining real property from an employee's spouse and the employee's spouse's partner where the employee is not an owner, investor nor in any other way interested in the property other than through the spouse's half ownership. Op. of Miss. Ethics. Comm. Op. No. 02-015-E.

A school board member's spouse may not contract with the school district to perform electrical work. Op. of Miss. Ethics. Comm. Op. No. 02-031-E.

A school board member's spouse's partner can form a business separate from his and the school board member's spouse's existing business, and his separate business may contract with the school district to perform electrical work. Op. of Miss. Ethics. Comm. Op. No. 02-031-E.

A member of an advisory committee for the University of Mississippi Medical Center School of Health-Related Professions, Department of Dental Hygiene, may also serve on the Mississippi State Board of Dental Examiners. Op. of Miss. Ethics. Comm. Op. No. 02-037-E.

An individual may be employed with the state Department of Human Services also serve on a county school board. Op. of Miss. Ethics. Comm. Op. No. 02-046-E.

A state university may purchase from a company that employs the girlfriend of the university's purchasing agent. Op. of Miss. Ethics. Comm. Op. No. 02-052-E.

A state university may not purchase from a company where the sales manager for the company is the university's purchasing agent's spouse. Op. of Miss. Ethics. Comm. Op. No. 02-052-E.

A school board member may not vote to employ his or her spouse, minor child, or other relative living in the school board member's household, and also may vote to employ his financially independent child or parent; however, a school board member may vote to employ a relative, other than a spouse, child, or parent, when the school board member and the relative are financially independent of each other and when the school board member is not interested in the relative's employment contract with the school district. Op. of Miss. Ethics. Comm. Op. No. 02-064-E.

A superintendent of education's spouse, child, or parent can be employed as a certificated employee by a school board if the school board has established a policy to authorize the school board's designee to recommend no more than two positions per employment period for each school and the position of the spouse, child, or parent of the superintendent is one such position. Op. of Miss. Ethics. Comm. Op. No. 02-064-E.

It is not as such a violation of the conflict of interest laws for a county school board member to simultaneously serve as an employee of the county board of supervisors so long as there exist no contracts between the two governmental entities, the county and the county school district, in which the county school board member would have an inherent interest and/or a private pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 02-069-E.

Employment of an elected county school board of education member by the county as county community service director supervising prisoners under a program established by the circuit court judge for prisoners to perform community service under the jurisdiction of the circuit court would not violate conflict of interest statutes. Op. of Miss. Ethics Comm. Op. No. 02-080-E.

A school board member's spouse is prohibited by Miss. Const. Art. 4, § 109 and § 25-4-105(2) from performing work and receiving living allowances and education awards provided by the national service program related to the regional service program's contract with the school district concerning the district's early head start program. Op. of Miss. Ethics Comm. Op. No. 02-084-E.

A school district is not prohibited from purchasing pre-game meals for its ball teams from the booster club that has as its members some of the teachers of the school system. Op. of Miss. Ethics Comm. Op. No. 02-091-E.

A school may not purchase pre-game meals for its ball teams from a business in which a teacher has a personal and pecuniary interest. Op. of Miss. Ethics Comm. Op. No. 02-093-E.

14. Hospital, health care.

No violation exists where members of community hospital board of trustees and its administrative employees serve as members, board members or officers of non-profit corporation organized by hospital to provide patient health care services. As long as trustees and employees are compensated by hospital according to state law rather than non-profit corporation, they would have no prohibited interest in any contracts between hospital and non-private corporation nor any material financial interest in such non-profit corporation, and their interest in corporation would be to represent hospital's interest and concerns. However, once partnership is formed, contracts between hospital and partnership would effectively preclude any hospital trustee, employee or agent from becoming investor, whether directly or indirectly, in partnership. Also, public servants of hospital would not be allowed to become employees of partnership or of any facility owned by partnership. Moreover, any doctor who is classified as independent contractor with hospital should analyze his or her contract prior to becoming associated with partnership to ensure that he or she is not public servant of hospital; nature and scope of each contract would determine whether given doctor is independent contractor or public servant. Op. of Miss. Ethics Comm. Op. No. 92-048-E.

No violation exists where members of community hospital board of trustees and its administrative employees serve as members, board members or officers of non-profit corporation organized by hospital to provide patient health care services. As long as trustees and employees are compensated by hospital according to state law rather than non-profit corporation, they would have no prohibited interest in any contracts between hospital and non-private corporation nor any material financial interest in such non-profit corporation, and their interest in corporation would be to represent hospital's interest and concerns. However, once partnership is formed, contracts between hospital and partnership would effectively preclude any hospital trustee, employee or agent from becoming investor, whether directly or indirectly, in partnership. Also, public servants of hospital would not be allowed to become employees of partnership or of any facility owned by partnership. Moreover, any doctor who is classified as independent contractor with hospital should analyze his or her contract prior to becoming associated with partnership to ensure that he or she is not public servant of hospital; nature and scope of each contract would determine whether given doctor is independent contractor or public servant. Op. of Miss. Ethics Comm. Op. No. 92-048-E.

Member of county board of supervisors simultaneously employed by county hospital of same county would have prohibited interest in contract authorized by the board of which he is a member. Provisions would be violated should described circumstances exist subsequent to start of new budget cycle, whereas prior to such start of budget cycle no violation would occur since employment in question had been authorized prior to the supervisor's taking office. Same principles would apply to any new contracts authorized between hospital and board of supervisors or as to any such items requiring action on part of board, such as hospital's budget, contracts which include payment to hospital for services or of interest to all employees of hospital, as their sustenance is in part derived from such contract. Only complete recusal on part of supervisor in all board deliberations and voting as to matters involving hospital, including appointment of its trustees, will avoid violation as to code subsection (1), but recusal removes only the vote, and not the prohibited interest subject to constitutional Section 109 and code § 25-4-105(2). (Commission also recommended that office of Attorney General be contacted as to applicability of Constitutional separation of powers doctrine as Commission lacks authority to interpret that provision.) Op. of Miss. Ethics Comm. Op. No. 92-231-E.

Legislator may not become employed as consultant to home health agency, because of potential for agency to receive funds authorized by legislature. Op. of Miss. Ethics Comm. Op. No. 93-076-E.

Ethics Laws prohibit nurse employed as state division director of program from becoming employed during off hours by private nursing agency which has provider agreement with division, and which also operates in part under plans of care which are improved by same nurse. To avoid violation, it would be necessary for nurse to completely remove herself from any official functions dealing with private employer; however, even such measure would be ineffective as to application of subsection (3)(a). Op. of Miss. Ethics Comm. Op. No. 93-161-E.

It would be difficult for nurse employed as state division director of program from becoming employed by private medical doctor who is not under provider agreement or plan of care but who does receive Medicaid reimbursement, since, although private off-hours employment with private agency which is neither under provider agreement, plan of care for children, or supervision or inspection of division nor receives Medicaid reimbursement, would not in and of itself violate ethics laws, such employment should be subject to periodic review so that due to any intervening facts one or more code sections are not violated. Op. of Miss. Ethics Comm. Op. No. 93-161-E.

A county tax assessor/collector may serve on the board of trustees of the community hospital owned by his county. The tax assessor/collector was cautioned regarding Sections 25-4-101 and 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 95-103-E.

County community hospital trustees may not promote and encourage other trustees to vote for a donation to a non-profit foundation of which they are officers and members if the non-profit foundation is a "business with which they are associated" as it would violate § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-024-E.

A county owned community hospital may not use as its depository a bank that one of the members of the hospital's board of trustees serves on as an officer or employee as it violates Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 96-045-E.

The administrators or chief executive officers of public community hospitals may accept appointments and serve on the board of directors or as officers of a nonprofit corporation established as a rural health network by their respective public community hospitals provided the network does not compensate them. Op. of Miss. Ethics Comm. Op. No. 96-059-E.

Administrative employees of public community hospitals, but not the administrator or chief executive officer, may accept appointments and serve on the board of directors or as officers of a managed care organization, or other affiliated corporations, established by a rural health network that was itself established by their respective public community hospitals provided the managed care organizations or other corporations do not compensate them. Op. of Miss. Ethics Comm. Op. No. 96-059-E.

The boards of trustees of public community hospitals may contract with managed care organizations, or other affiliated corporations, that have the hospitals' administrative employees serving as directors and officers and that were established by a rural health network that was itself established by these same hospitals, provided the managed care organizations or other corporations do not compensate the hospitals' administrative employees. However, the board was cautioned regarding Constitutional Section 109 and § 25-4-105(1), (2), (3)(a) and (5). Op. of Miss. Ethics Comm. Op. No. 96-059-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a sitting member of the board of trustees of a county owned hospital from accepting the position of hospital administrator with the county owned hospital during the member's term or within one (1) year after the expiration of the member's term. Op. of Miss. Ethics Comm. Op. No. 96-093-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county supervisor's pharmacy from providing medication to the community hospital owned by the county he serves. Op. of Miss. Ethics Comm. Op. No. 96-097-E.

An individual may not provide medical treatment to inmates under a contract between a community hospital, a private prison and the governmental authority over the private prison when the individual is a board member of the governmental authority. Op. of Miss. Ethics. Comm. Op. No. 97-147-E.

A physician member of a board of trustees of a community hospital may not intentionally use or disclose nonpublic information gained as a member of the board of trustees that could result in a pecuniary benefit for himself, his company or his company's center. Op. of Miss. Ethics. Comm. Op. No. 97-150-E.

A physician member of a board of trustees of a community hospital attempting to persuade the board of trustees to reconsider its vote to begin the process of looking at alternatives for recruiting an additional physician that would practice in the same field as the physician member has the potential to create suspicion among the public and reflecting unfavorably upon the community hospital. Op. of Miss. Ethics. Comm. Op. No. 97-150-E.

A member of a community hospital's board of trustees is prohibited from purchasing an interest in a limited liability company that will own 50% of another limited liability company when the remaining 50% ownership interest will be purchased by a nonprofit corporation to which the community hospital's board of trustees authorizes financial assistance and appoints its board members. Op. of Miss. Ethics Comm. Op. No. 98-005-E.

Employees of the manager of a community hospital who serve as the community hospital's chief executive officer and chief financial officer under the manager's contract with the community hospital may simultaneously serve as uncompensated board members and officers of a nonprofit corporation organized and operated exclusively to promote health and healthcare in the community hospital's service area even though the nonprofit corporation will receive financial assistance and grants from the community hospital. Op. of Miss. Ethics Comm. Op. No. 98-005-E.

A former member of the State Board of Nursing Home Administrators may serve as an expert witness in litigation that involves a question of care given to a resident of a nursing home when the time period of the alleged incident coincides with five months of the former member's term on the State Board so long as the former member was not directly concerned with or personally participated in any case, decision, proceeding or application relating to not only this particular instance concerning the care given this particular resident, but also the general care given by this particular nursing home to its general patient population. Op. of Miss. Ethics Comm. Op. No. 98-11-E.

A community hospital may contract with an electrical contracting company when the company is owned by the parents of the community hospital's senior vice president's son-in-law and the company employs the community hospital's senior vice president's son-in-law where, after a legitimate competitive bid process, the parents' company is determined to be the lowest and best bid. Op. of Miss. Ethics Comm. Op. No. 98-054-E.

This section does not apply to a member of the Board of Chiropractic Examiners who performs independent medical examinations and/or testifies in court as an expert witness on claims of one of the chiropractors practicing in the State. Op. of Miss. Ethics Comm. Op. No. 98-079-E.

A state executive officer may continue in private practice in a specific field of medicine after accepting a public position that gives the state executive officer regulatory powers and duties regarding the specific field of medicine and its practitioners, so long as he totally and completely recuses himself from any duty or responsibility as a state executive officer that concerns his practice or his clients. Op. of Miss. Ethics Comm. Op. No. 98-081-E.

A community hospital trustee should recuse himself in an appeal before the hospital board concerning a doctor-trustee's unfavorable decision regarding his admitting privileges and practice where the trustee is president of the local bank with which the doctor-trustee has a number of loans and where the trustee's ex-spouse is employed and compensated by a management company for work she does for the doctor-trustee under a contract between the management company and the doctor-trustee. Op. of Miss. Ethics Comm. Op. No. 98-121-E.

Article IV, Section 109 of the Constitution and subsection (2) of this section absolutely prohibit a community hospital board member from purchasing community hospital surplus property during his or her term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 99-009-E.

It is not a violation of the state conflict of interest laws for a community hospital to continue to use an advertising and public relations corporation for its regularly required services, nor to accept specific proposals submitted by the advertising and public relations corporation, even though the corporation's chairman and chief executive officer is the brother-in-law of the community hospital's new president. Op. of Miss. Ethics Comm. Op. No. 99-031-E.

A community hospital may release monies legally due a physician/community hospital trustee from patients when such monies were erroneously and wrongfully collected by the community hospital from the patients by way of a previously cancelled contract between the community hospital and the physician/community hospital trustee. Op. of Miss. Ethics Comm. Op. No. 99-088-E.

A community hospital is prohibited from using a bank as its depository or from contracting in any other way with a bank when either a member or spouse of a member of the community hospital's board of trustees is also a member of the bank's board of directors. Op. of Miss. Ethics Comm. Op. No. 99-093-E.

It was not a violation of the state conflict of interest laws for former members of a community hospital board of trustees to be appointed to the board of directors of the nonprofit, charitable foundation established to carry out a county board of supervisors' grant of public power to provide necessary and proper relief and support to the county's poor and to expend public funds for treatment of the indigent sick and to promote public health in the county. Op. of Miss. Ethics. Comm. Op. No. 99-103-E.

A nonprofit corporation, whose board of directors included all or some of the members of a board of trustees of a community hospital, could not lease the community hospital from the county board of supervisors as the board of trustees' actions to establish the nonprofit and to appoint themselves members of its board of directors under the facts and circumstances presented would in fact result in those actions being a part of the authorization of the lease contract for the community hospital. Op. of Miss. Ethics. Comm. Op. No. 99-123-E.

The president of a community hospital may not serve simultaneously as a member of the board of directors of the community hospital's depository if the president of the community hospital has a material financial interest in the community hospital's depository. Op. of Miss. Ethics. Comm. Op. No. 99-129-E.

Employees of a state hospital may serve on the board of directors of a corporation that provides physician coverage in emergency departments of hospitals as long as they are not compensated for serving on the board of directors; should the administrative personnel of the state hospital be compensated for serving on the corporation's board, then they could be in violation of the statute if the compensation resulted in the state hospitals' administrative employees having a material financial interest in the corporation. Op. of Miss. Ethics. Comm. Op. No. 00-060-E.

The director of an emergency ambulance service is prohibited from serving on the E-911 commission if the emergency ambulance service contracts with the county to provide E-911 services. Op. of Miss. Ethics. Comm. Op. No. 00-092-E.

A nurse of a regional hospital is not prohibited from being a county E-911 commissioner; however, a violation of the statute would occur should a future contract between the regional hospital and the county for E-911 services be entered into. Op. of Miss. Ethics. Comm. Op. No. 00-092-E.

A business owned by an employee of a community hospital cannot contract with the community hospital. Op. of Miss. Ethics. Comm. Op. No. 01-029-E.

A business owned by the former director of pharmaceutical services of a community hospital could contract with the community hospital within one year of his resignation. Op. of Miss. Ethics. Comm. Op. No. 01-029-E.

The appointment of the parent to the board of trustees of the community hospital can certainly result in a violation of the state conflict of interest laws due to the child's employment with the community hospital; in order for the potential hospital trustee to avoid a violation of the section, the potential hospital trustee's child must be totally and completely financially independent from the potential hospital trustee and the potential hospital trustee must have no interest, direct or indirect, in the child's employment contract with the county hospital. Op. of Miss. Ethics. Comm. Op. No. 01-056-E.

A community hospital is prohibited from contracting with a physician to pay his moving and relocation expenses and a portion of his student loans where the physician will be employed by the medical clinic in which the hospital trustee is an equity member. Op. of Miss. Ethics. Comm. Op. No. 01-062-E.

15. Judge, judicial employee.

Conflict of interest laws do not permit Chancellor to lease private law office property to county for use of court administrator whose existence was created by an order of the Chancellor. Op. of Miss. Ethics Comm. Op. No. 89-98-E.

Chancellor may sell private law office real property to third party and thereafter lease same or part of same premises for his own use and use of court administrator whose existence was created by an order of the Chancellor, such lease to be at county expense; however such arrangement is permissible only if sale to disinterested third-party is absolute and final with no future options and not contingent upon any future action of Chancellor, and the space leased from third party would be that for use by the Chancellor. Chancellor must not be placed into any position of receiving pecuniary benefit prohibited by section. Op. of Miss. Ethics Comm. Op. No. 89-98-E.

Ethics in Government laws prohibit newly elected county supervisor from having spouse employed as deputy justice court clerk. Violations would occur once board adopts annual budget after newly elected supervisor takes office. Underlying rationale is principle that any interest of one spouse accrues to other spouse. Op. of Miss. Ethics Comm. Op. No. 91-111-E.

Service of writs or summons by deputy circuit clerk during her regular working hours would constitute use of her official position for pecuniary benefit in violation of code. To serve writs or process without violating subsection (1), such activity must be devoid of such factors as use of official position, county facilities and county telephones, etc, during regular working hours. Op. of Miss. Ethics Comm. Op. No. 93-142-E.

A county may pay the office telephone and utility costs for the court administrator's office when the office space and related furnishings are owned by the circuit judge, as long as the telephone and utility services are in the name of the court administrator's office and are used solely for court administrator duties. Op. of Miss. Ethics Comm. Op. No. 95-013-E.

A circuit judge may not issue an order that the court administrator's office be located in property titled to the circuit judge. Op. of Miss. Ethics Comm. Op. No. 95-013-E.

Deputy justice court clerks that own and operate a defensive driving school may accept traffic violators ordered to attend such a school as part of their sentence by a justice court judge serving the deputy clerk's employer/county, provided the clerk does not use his or her official position to influence a justice court judge to order traffic violators to attend the school in question. Op. of Miss. Ethics Comm. Op. No. 95-054-E.

A county board of supervisors may employ the child of the county's justice court clerk as a part time deputy justice court clerk. However, the board was cautioned regarding § 25-4-101 and § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-069-E.

A justice court judge may not contract to serve as an auctioneer for a joint auction held by a municipality and the county the justice court judge is elected to serve because it would violate § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 96-070-E.

The conflict of interest laws do not prohibit a city council member from resigning his position on the city council and immediately accepting the position of city municipal judge, as the municipal judge position is a "public office" and therefore not held by contract. Op. of Miss. Ethics Comm. Op. No. 97-003-E.

A chancery court judge is not prohibited from leasing office space to the Probation and Parole office if the lease contract is entered into after at least three or more legitimate bids are received and a determination is made that the requestor's bid is the lowest and best bid. Op. of Miss. Ethics Comm. Op. No. 97-138-E.

A county may not purchase from a service center owned by an individual serving as one of the county's justice court judges. Op. of Miss. Ethics. Comm. Op. No. 97-141-E.

A city may purchase from a service center owned by an individual that is serving as a justice court judge in the county in which the city is located; however, the justice court judge will be required to recuse himself from any matter coming before the county justice court that concerns a city that does business with the justice court judge's company. Op. of Miss. Ethics. Comm. Op. No. 97-141-E.

A city judge may not serve as an assistant to the mayor in the capacity of economic development specialist. Op. of Miss. Ethics Comm. Op. No. 98-067-E.

It is not a violation of the state conflict of interest laws for an individual to serve as circuit clerk when the individual's spouse is an attorney who handles civil and criminal cases in the Circuit Court. Op. of Miss. Ethics Comm. Op. No. 98-092-E.

Subsection (3)(a) of this section prohibits a county justice court administrator from being employed by either a driving academy or a collection agency if the driving academy or the collection agency are contractors, subcontractors, or vendors with the county and if the administrator's employment with either the driving academy or the collection agency results in his having a material financial interest in either business. Op. of Miss. Ethics Comm. Op. No. 98-115-E.

An individual who is serving as both the municipal clerk and the municipal court clerk may also simultaneously serve as a county justice court judge. Op. of Miss. Ethics Comm. Op. No. 99-016-E.

A circuit judge may lease office space to a state agency if the lease contract is entered into because the circuit judge's building is one of just two or fewer commercial sources reasonably available to the state agency and the lease agreement complies with the state's public purchases laws. Op. of Miss. Ethics Comm. Op. No. 99-020-E.

The state conflict of interest laws do not prohibit a city employee from remaining an employee of the city while a candidate for the office of justice court judge. Op. of Miss. Ethics Comm. Op. No. 99-021-E.

It is not a violation of the state conflict of interest laws for a state employee to be appointed to the position of justice court judge by the board of supervisors for a designated period of time; however, the state employee, if appointed to the position of justice court judge for the designated period of time, can not be involved in any cases directly or indirectly concerning the state agency or directly or indirectly concerning any individuals or their family members that the state employee has dealt with in regard to his or her duties with the state agency. Op. of Miss. Ethics Comm. Op. No. 99-025-E.

An individual employed by the Department of Human Services through a contract with the Department to find and help certain clients with employment may also simultaneously be a candidate for, and, if elected, serve as, a justice court judge since the position of justice court judge is a county office and the county and the state are separate governmental entities. Op. of Miss. Ethics Comm. Op. No. 99-036-E.

It is not as such a violation of the state conflict of interest laws for the child of a Chancery Court Judge to serve, if elected, as the chancery clerk of a county that is within the Chancery Court District that the father serves as Chancellor. Op. of Miss. Ethics Comm. Op. No. 99-043-E.

A title abstracting company that is owned by a chancery clerk is precluded from doing title abstracting work in the chancery clerk's office of the county its owner serves as chancery clerk. Op. of Miss. Ethics Comm. Op. No. 99-049-E.

Deputy circuit clerks may not be employed by the executive committees and paid by the county to work in the election center on the night of elections where the deputy circuit clerks' duties with the executive committees are not duties that would be considered the statutory duties of a circuit clerk or a deputy circuit clerk. Op. of Miss. Ethics Comm. Op. No. 99-066-E.

A justice court judge is not as such prohibited by the Ethics in Government laws from being employed by the State of Mississippi. Op. of Miss. Ethics Comm. Op. No. 99-084-E.

A justice court judge serving on the county's community hospital's board of trustees is not as such prohibited by the conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 99-101-E.

If the contracts a county has with a bank are limited solely to the bank purchasing bonds, notes, or other evidences of debt from the county or to the bank serving as the county depository, then the bank may contract with the county for these limited purposes even though a county justice court judge is employed by the corporation that owns the bank. Op. of Miss. Ethics. Comm. Op. No. 99-118-E.

An insurance agency which employs a justice court judge may contract with the county only if goods or services being provided by the insurance agency are reasonably available from two or fewer commercial sources and the transactions comply with the public purchases laws. Op. of Miss. Ethics. Comm. Op. No. 99-118-E.

An individual elected to serve the county as a justice court judge cannot also be employed by the sheriff and compensated by the county as director of the county juvenile detention center. Op. of Miss. Ethics Comm. Op. No. 99-127-E.

It is not a violation of the state conflict of interest laws for a county justice court clerk to be simultaneously employed by a city as a part-time city court clerk; however, the county justice court clerk would be prohibited, while employed as a part-time city court clerk, from maintaining the city's court records on the county justice court's computer system. Op. of Miss. Ethics. Comm. Op. No. 00-093-E.

A county justice court judge can contract with the county school district located within the county the justice court judge is elected to serve because the general county governmental entity and the county school district are separate governmental entities for purposes of the state conflict of interest laws. Op. of Miss. Ethics. Comm. Op. No. 00-131-E.

A body shop owned by a justice court judge is prohibited from doing repair work on the county's vehicles operated by the sheriff's department. Op. of Miss. Ethics. Comm. Op. No. 01-027-E.

It is not a violation of the state conflict of interest laws for a body shop owned by a justice court judge to do business with a city that is located in the county the justice court judge is elected to serve; however the judge would be required to recuse himself from any matter coming before the county justice court that concerned the city that does business with the body shop. Op. of Miss. Ethics. Comm. Op. No. 01-027-E.

A circuit judge can simultaneously employ two spouses in positions with a drug court program, one as a case management person and one as a coordinator/record keeper, if neither is a relative of the circuit judge and neither has supervisory power over the other. Op. of Miss. Ethics. Comm. Op. No. 01-042-E.

A justice court clerk and/or her spouse may operate a collection agency that collects unpaid delinquent case balances for justice courts and municipal courts, excluding the justice court for which the court clerk currently works. Op. of Miss. Ethics. Comm. Op. No. 02-013-E.

An individual who is serving as director of a county juvenile temporary holding facility by appointment from the youth court judge may also serve as a justice court judge appointed by the county board of supervisors to fill the unexpired term in the position of justice court judge. Op. of Miss. Ethics. Comm. Op. No. 02-032-E.

An individual serving as the county public defender may also serve as a justice court judge appointed by the county board of supervisors to fill an unexpired justice court judge's term. Op. of Miss. Ethics Comm. Op. No. 02-097-E.

16. Law enforcement.

Ethics laws would be violated should sheriff employ his spouse. Sheriff's office is not a separate authority, but part of county government. Board of supervisors must authorize sheriff's expenditures, including the hiring of employees, predicated on recommendation of sheriff. Such recommendation or hiring by sheriff constitute use of his official position to obtain pecuniary benefit in violation of code. Op. of Miss. Ethics Comm. Op. No. 92-085-E.

Ethics violation exists where person is elected alderman whose spouse is sergeant on city's police department. Once city's annual budget is adopted or like official action takes place which affects spouse of alderman, a violation of Constitutional Section 109 and Code Section 25-4-105(2) will occur. Op. of Miss. Ethics Comm. Op. No. 92-111-E.

Since county school system, pursuant to § 25-4-103(a), is separate authority from that of county proper, which includes board of supervisors, sheriff's office, and other divisions, county sheriff and employee of county Law Enforcement Agency may own and operate business, such as private security business, which contracts with county school system, so long as other provisions are not violated. However, Commission points out strong potential for abuse, concerning, for instance, use of confidential information and licensing of private security company employees to carry weapons. Another concern is almost certain appearance of impropriety that would arise. Op. of Miss. Ethics Comm. Op. No. 93-225-E.

A former alderman who resigned to become employed as a town policeman has an interest in the contract, authorized by his board, to adopt the budget from which the salary is paid, and therefore is prohibited from such employment for his current term or within one year after the termination of the term. Op. of Miss. Ethics Comm. Op. No. 94-096-E.

A full-time state hospital security guard may also be elected and serve as a county constable as long as the duties and responsibilities of each remain separate. The official position as a guard must not be used for a pecuniary benefit as to the performance of duties as constable, and as a candidate the guard must not campaign while on duty at the hospital and must not use any of the hospital facilities or equipment for campaign purposes. Op. of Miss. Ethics Comm. Op. No. 94-097-E.

A municipality's acting chief of police may qualify as a candidate for justice court judge without taking a leave of absence. Op. of Miss. Ethics Comm. Op. No. 95-010-E.

A municipal police officer may qualify as a candidate for sheriff without taking a leave of absence. Op. of Miss. Ethics Comm. Op. No. 95-010-E.

A sheriff's department may not lease from one of its deputy sheriffs a motor vehicle for use as a drug protection canine unit for $1.00 a month and provide the necessary liability and collision insurance coverage. Op. of Miss. Ethics Comm. Op. No. 95-019-E.

A sheriff may not retain his spouse as an employee after their marriage. Op. of Miss. Ethics Comm. Op. No. 95-022-E.

It is not a violation of the conflict of interest laws if a dispatcher is employed by a county sheriff's department, is a licensed bail bond agent, and is writing bail bonds returnable to judicial and law enforcement entities other than those of his or her employing county. However, the dispatcher was cautioned as to § 25-4-105(1) and (5) and the prohibition in § 25-4-105(3)(a) concerning writing bail bonds to entities of the employing county. Op. of Miss. Ethics Comm. Op. No. 95-064-E.

A municipality accepting donations for its police department that come from a bingo game operated by a nonprofit corporation located within the municipality when it is properly licensed by the state does not violate the conflict of interest laws. However, it has the appearance of an impropriety contrary to Code Section 25-4-101. Op. of Miss. Ethics Comm. Op. No. 95-084-E.

A child of a police chief may under certain circumstances become a police officer with the police chief's municipality. The police chief was cautioned regarding Sections 25-4-101 and 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 95-099-E.

A county deputy sheriff may be appointed town marshal of a municipality located within the county employing the deputy sheriff. However, the deputy sheriff was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-017-E.

A constable may not purchase a surplus sheriff's vehicle from the county he serves as it would violate § 25-4-105(3)(b). Op. of Miss. Ethics Comm. Op. No. 96-021-E.

The forming of a monthly club and charging a fee by a sheriff to provide information about the sheriff's department is prohibited by § 25-4-105(1) and contrary to the public policy in § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-079-E.

Constitutional Section 109 and § 25-4-105(2) prohibit an alderman from providing services to his or her municipality and being compensated for the services. Op. of Miss. Ethics Comm. Op. No. 96-084-E.

A police officer's father's wrecker service contracting with the police officer's municipality is prohibited if the police officer uses his position to obtain the municipality's business for his father's wrecker service and/or has a material financial interest in the wrecker service in violation of § 25-4-105(1) and (3)(a). The officer was also cautioned regarding § 25-4-101. Op. of Miss. Ethics Comm. Op. No. 96-084-E.

Constitutional Section 109 and § 25-4-105(2) prohibit a county deputy sheriff from serving as a city council member when the county sheriff's department and the city contract through an interlocal governmental agreement for the county sheriff's department to provide police protection for the city. Op. of Miss. Ethics Comm. Op. No. 97-056-E.

A law enforcement officer in the employ of the state may serve as a part-time law enforcement officer in the employ of a municipality. Op. of Miss. Ethics. Comm. Op. No. 97-153-E.

A municipality may institute a policy and procedure that absolutely prohibit the municipality's law enforcement employees from working in the private sector in certain fields such as private investigations and process serving. Op. of Miss. Ethics. Comm. Op. No. 97-164-E.

A municipal employee, such as a police officer, is not prohibited from being elected to the position of constable and thereafter serving as constable in the county that the municipality employing the candidate is located. Op. of Miss. Ethics Comm. Op. No. 98-003-E.

A constable may do private investigative work for an indigent defendant in a capital murder case in a county other than the county the constable is elected to serve when appointed to do so by the Circuit Court. Op. of Miss. Ethics Comm. Op. No. 98-007-E.

Subsection (3)(a) of this section prohibits a city's part-time police officer and dispatcher who also operates an auto repair shop from being paid by the city to service and repair its vehicles at his auto repair shop. Op. of Miss. Ethics Comm. Op. No. 98-103-E.

A city is prohibited from purchasing tires and tire repair services for the police department from the police chief's son's tire business due to the actions and involvement of the police chief where the police chief told the city clerk that he wanted the purchases for the police department to be made from his son's tire business and also that the police chief became indignant with the city clerk when she questioned the appropriateness of the city purchasing tires and tire repair services for the police department from the police chief's son's business. Op. of Miss. Ethics Comm. Op. No. 98-123-E.

The state conflict of interest laws do not prohibit a county constable and the county constable's spouse, or any law enforcement officer and law enforcement officer's spouse, from owning and operating a bail bonding company; however, a county constable and the county constable's spouse, through a bail bonding company owned and operated by the county constable and/or the county constable's spouse, are prohibited from writing bail bonds for the release of defendants in the custody of the county that the constable serves. Op. of Miss. Ethics Comm. Op. No. 99-003-E.

After resigning or retiring, a former county deputy sheriff may be appointed to the office of chief of police of a municipality located within the county which employed the deputy sheriff. Op. of Miss. Ethics Comm. Op. No. 99-004-E.

A police officer may serve in the elected position of constable since a municipality and a county are separate governmental entities for purposes of the Ethics in Government Law. Op. of Miss. Ethics Comm. Op. No. 99-005-E.

It is not a violation of the state conflict of interest laws for the spouse of a sheriff to be an employee of the board of supervisors of the same county the sheriff is elected to serve, since the sheriff has no legal authority in decisions concerning the board of supervisors' employees; however, the sheriff must completely avoid any involvement in the board of supervisors' decisions concerning his spouse, especially with regard to her compensation or employment benefits. Op. of Miss. Ethics Comm. Op. No. 99-013-E.

A full-time county road department employee may not be separately hired by the sheriff and compensated by the county for services rendered the sheriff's department of the county as a part-time guard of lunacy pre-commitment patients who are held in a privately-owned local hospital under chancery court order. Op. of Miss. Ethics Comm. Op. No. 99-028-E.

A municipal police officer may be a private process server during his off-duty hours, but may not (1) use any municipal equipment, facilities, information or authority, especially his sworn law enforcement authority, in performing his private process serving work, (2) contract with the municipality employing him, including contracts where the process serving services are paid for with the municipality's funds, and (3) use or disclose nonpublic information gained in the course of or by reason of his official employment with the municipality in any way in performing his private process serving work. Op. of Miss. Ethics Comm. Op. No. 99-041-E.

It is not a violation of the state conflict of interest laws for an individual to be employed as a police officer by two different cities when the individual will not work both jobs simultaneously or during the same hours. Op. of Miss. Ethics Comm. Op. No. 99-080-E.

A bail bonding company owned by the spouse of a constable/police officer is prohibited by subsection (3)(a) from writing bail bonds for the release of defendants confined in the jail of the county served by the constable and the city jail of the city served by the police officer unless the income in question is solely that of the constable/police officer's spouse and the constable/police officer exercises no control, direct or indirect, over the contract between the spouse and the county or city. Op. of Miss. Ethics. Comm. Op. No. 99-092-E.

A law enforcement officer's spouse is not as such prohibited by the conflict of interest laws from writing bail bonds for the release of defendants confined in the jail of the law enforcement officer's entity as a soliciting bail agent for a bail bond company if neither the law enforcement officer nor his spouse is an officer, director, or partner in the bail bond company and they have no ownership interest in the bail bond company; however, the law enforcement officer must totally and completely remove himself from the approval of any surety bail bond with which she or her bail bond company employer is associated. Op. of Miss. Ethics. Comm. Op. No. 99-106-E.

An individual cannot be paid by the Department of Human Services to serve summons as a constable unless and until such time as specific statutory authority exists to allow same. Op. of Miss. Ethics. Comm. Op. No. 00-018-E.

It is not a violation of the state's conflict of interest laws for a full-time security officer in the employ of a state university to serve as a part-time auxiliary police officer in the employ of a city. Op. of Miss. Ethics. Comm. Op. No. 00-083-E.

A full-time radio dispatcher for the Mississippi Highway Safety Patrol can also be employed by a county sheriff's department as a part-time deputy sheriff; however, the individual would be prohibited from being paid both as a radio dispatcher for the Mississippi Highway Safety Patrol and/or as a part-time county deputy sheriff during the same work schedule for carrying out his duties with the state and/or county. Op. of Miss. Ethics. Comm. Op. No. 00-091-E.

It is not a violation of the state conflict of interest laws for a city police department employee to serve as a county E-911 commissioner; however, the city police department employee would have a prohibited interest in the E-911 contract between the city and the county authorized by the E-911 commission of which he or she was a member if his duties as a city police department employee were related to the E-911 contract. Op. of Miss. Ethics. Comm. Op. No. 00-092-E.

It is not a violation of the state conflict of interest laws for a county E-911 commissioner's son to be employed by the county sheriff's department; however, a violation of the section would occur if the E-911 service contracted with the county sheriff's department to provide E-911 services and the son's employment with the county sheriff's department related to the E-911 service contract with the county sheriff's department if the facts were such that the E-911 commissioner had an interest in the son's employment contract with the county sheriff's department. Op. of Miss Ethics. Comm. Op. No. 00-092-E.

A deputy sheriff is prohibited from serving as an alderman if and when the city during his term or within one year thereafter enters into an interlocal agreement with the county in which he would have a private pecuniary interest, such as the county sheriff's department providing police protection or jail services to the city. Op. of Miss. Ethics. Comm. Op. No. 00-094-E.

A local law enforcement officer will not be in violation of the statute when serving as a noncompensated special contract agent for the Bureau of Narcotics if the local governmental entity does not compensate him or her for work as a special contract agent. Op. of Miss. Ethics. Comm. Op. No. 00-095-E.

A city police officer's employment as a part-time deputy sheriff is not a violation of the conflict of interest laws; however, he would be prohibited from using the supplies, equipment, vehicles, and other resources available to him as a city police officer to carry out his duties as a part-time deputy sheriff for which he was being personally compensated, and he would be prohibited from being paid both as a city police officer and/or as a part-time deputy sheriff during the same work schedule for carrying out law enforcement functions within the city and/or county. Op. of Miss. Ethics. Comm. Op. No. 00-096-E.

A sheriff's step-daughter cannot be employed as a correctional officer by the regional jail facility where he is the chief corrections officer as he would not be able to carry out his mandated statutory duties without using his position to allow his step-daughter to receive or retain a pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 00-108-E.

The parent of a dispatcher for the city police department can write bail bonds for the release of defendants confined in the city's jail unless the child has a personal or pecuniary interest in the bail bonding company that results in a material financial interest; to be certain that a violation of the statute did not occur, the city would be required to establish rules and regulations that absolutely precluded police department employees' involvement in the bail bond process when those employees were the parents or children of bail bond company employees or agents. Op. of Miss. Ethics. Comm. Op. No. 00-114-E.

A police officer is prohibited from contracting with his city employer to perform a service for compensation in addition to the police officer's normal salary, including an off-duty police officer serving "failure to appear" and "old fines" warrants for the city court. Op. of Miss. Ethics. Comm. Op. No. 01-005-E.

An individual employed by the county sheriff's department as a courtroom bailiff can simultaneously serve as an alderman with the city; however, the bailiff would be required to recuse himself from all matters coming before the board of aldermen that concerned his county employer if he was elected. Op. of Miss. Ethics. Comm. Op. No. 01-037-E.

A correctional officer employed by the county, who is also a bail bondsman, is prohibited from writing bail bonds for the release of defendants arrested and held in the custody of the county sheriff's department. Op. of Miss. Ethics. Comm. Op. No. 01-041-E.

A city police officer is not prohibited from serving as a deputy coroner, but cannot perform the duties of deputy coroner within the boundaries of the city he serves as police chief. Op. of Miss. Ethics. Comm. Op. No. 01-045-E.

An elected police chief is not prohibited from serving as a deputy coroner, but cannot perform the duties of deputy coroner within the boundaries of the city he serves as police chief. Op. of Miss. Ethics. Comm. Op. No. 01-045-E.

A deputy sheriff is prohibited from simultaneously serving as a deputy coroner when both positions are with the same county, and this prohibition applies to both a compensated deputy sheriff and an uncompensated auxiliary deputy sheriff. Op. of Miss. Ethics. Comm. Op. No. 01-045-E.

A police officer is prohibited from contracting with his city employer to perform a service for compensation in addition to the police officer's normal salary, including serving city warrants in the police officer's capacity as a county constable. Op. of Miss. Ethics. Comm. Op. No. 01-047-E.

A county deputy sheriff can serve as a member of the board of aldermen; however, a violation of the statute will arise in the event of a contract between the city and county in which the salaried county deputy sheriff and alderman would have a private pecuniary interest. Op. of Miss. Ethics. Comm. Op. No. 01-049-E.

A police officer's wrecker service is prohibited from providing towing services to and/or being paid for those services by the municipality which employs the officer; further the police officer is prohibited from contacting his wrecker service when he is the officer working an accident and prohibits the officer from recommending his wrecker service to a disabled vehicle's owner when he is the officer working the accident. Op. of Miss. Ethics. Comm. Op. No. 01-059-E.

If a disabled vehicle's owner and not the municipality is responsible for the cost of the towing service, the municipality's police department is not prohibited from including a police officer's wrecker service in its rotation for towing service if the municipality's police dispatcher makes the service call to the police officer's wrecker service and if the dispatcher makes the service call to the police officer's wrecker service only when it is next on the rotation list. Op. of Miss. Ethics. Comm. Op. No. 01-059-E.

A state trooper could serve as a deputy county coroner with the understanding that he was prohibited from being paid by two governmental entities for the same scheduled work hours. Op. of Miss. Ethics. Comm. Op. No. 01-087-E.

A trooper entering into a temporary "loan" agreement with the department to provide it a trained and certified law enforcement dog in return for compensation from the department is in actuality a contract to provide a service to the department for a price, thereby making the trooper a contractor with the department in violation of the statute. Op. of Miss. Ethics. Comm. Op. No. 01-090-E.

The stepchild of a municipal chief of police cannot act as a bail bond soliciting agent and write bail bonds for the release of defendants held in the custody of the police department headed by the chief of police. Op. of Miss. Ethics. Comm. Op. No. 01-094-E.

A police officer and his partner were not prohibited from setting-up and teaching an accident reconstruction course and charging a fee from the participants for attending the course, even though the police officer obtained his training in accident reconstruction at the expense of his city employer, as the police officer did not use his position to obtain the training. Op. of Miss. Ethics. Comm. Op. No. 01-113-E.

A person may simultaneously serve as a county constable and as a the county's solid waste enforcement officer. Op. of Miss. Ethics. Comm. Op. No. 01-123-E.

A deputy sheriff may not have a material financial interest in a bail bonding company that writes bail bonds for the release of defendants in the custody of the county sheriff, and, therefore, a bail bonding company is prohibited from writing bail bonds for the release of defendants confined in the county detention center of the county the deputy sheriff serves if the bail bonding company is owned by the deputy sheriff's spouse, parent, or child. Op. of Miss. Ethics. Comm. Op. No. 01-124-E.

A bail bonding agent may write bail bonds on defendants in the county detention facility when the bail bonding agent's daughter is an employee of the detention facility, but only if the detention officer totally and completely removes herself or is removed from the approval of any surety bail bond with which the father or the father's bail bond company employer is associated. Op. of Miss. Ethics. Comm. Op. No. 01-130-E.

A state trooper also be employed part-time as a county civil defense director, but should avoid contracting with any division of a county government that he is directly or indirectly involved with through his state employment. Op. of Miss. Ethics. Comm. Op. No. 02-014-E.

The spouse of a county sheriff's civil process department employee may write bail bonds for defendants not arrested by the county deputies but housed by the county sheriff's department only if neither the civil process employee nor the spouse is an officer, director, or partner in the bail bond company, and they have no ownership interest in the bail bond company and if the civil process employee's spouse's income from the bail bond company does not qualify as a material financial interest. Op. of Miss. Ethics. Comm. Op. No. 02-017-E.

The brother of a county deputy sheriff may write bail bonds for defendants housed by the county sheriff's department employing the deputy sheriff/brother. Op. of Miss. Ethics. Comm. Op. No. 02-028-E.

A county constable may serve as an interim executive director of a county tourism and recreation board. Op. of Miss. Ethics. Comm. Op. No. 02-035-E.

A city may employ a married couple as police officers for the city, as long as one spouse does not have administrative or supervisory responsibility for the other spouse. Op. of Miss. Ethics. Comm. Op. No. 02-047-E.

A deputy sheriff may not contract with the county to perform security services for the county arena and exposition center as the sheriff's department and county arena and exposition center are considered to be within the same county authority for purposes of the conflict of interest laws. Op. of Miss. Ethics. Comm. Op. No. 02-053-E.

It is not a violation of conflict of interest laws for a former deputy sheriff to immediately contract with the county upon his or her termination from the county; however, his business is prohibited from selling supplies to the county that are purchased from funds provided by a grant he was instrumental in writing for the county while employed as a deputy sheriff. Op. of Miss. Ethics Comm. Op. No. 02-085-E.

It is not a violation of state conflict of interest laws for a city police officer to serve as a county constable. Op. of Miss. Ethics Comm. Op. No. 02-088-E.

17. —District attorney.

Where district attorney is currently using set of law books owned by legal assistant employed by him, legal assistant may not sell set to district attorney, even though district attorney would then purchase upgrades from independent vendor, since legal assistant is public servant and as such is prohibited from being contractor or vendor with governmental entity of which he is member. Op. of Miss. Ethics Comm. Op. No. 93-093-E.

Spouse of district attorney may not remain his secretary following their marriage when her initial employment occurred before marriage, inasmuch as her continued employment as well as her supervision would be at discretion of district attorney, and her salary would depend on district attorney's written requisition to state. Op. of Miss. Ethics Comm. Op. No. 93-093-E.

As to whether district attorney may be paid for monthly rental of personally owned property, including office space, from funds appropriated by state for office expense allowance, any such rental would constitute prohibited contract. Such would also be case if such services were purchased from a spouse. However, determination of fact would be necessary if rental was from parent or child. Op. of Miss. Ethics Comm. Op. No. 93-093-E.

Rent may not be paid to compulsory school attendance officers for use of their home as office, from state funds appropriated for compulsory school attendance officers office expense allowance, as such would violate subsection (3) paragraph (a) of section. Determination of fact would be required to decide whether or not rental would involve use of official position for pecuniary benefit in violation of subsection (1). Op. of Miss. Ethics Comm. Op. No. 93-093-E.

A district attorney may contract with a municipality within his judicial district for the district attorney's office to serve as municipal prosecuting attorney. Op. of Miss. Ethics Comm. Op. No. 95-028-E.

A board of supervisors' leasing of office space for the district attorney from the district attorney's father is not prohibited. However, the board was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-080-E.

A district attorney's office may contract with one of its former assistants to continue working on a case that the assistant worked on while still holding the position of an assistant district attorney. Op. of Miss. Ethics Comm. Op. No. 98-001-E.

It is not as such a violation of the state conflict of interest laws for a county prosecuting attorney to simultaneously serve as the board attorney for a county school district. Op. of Miss. Ethics Comm. Op. No. 99-062-E.

It is not as such a violation of the state conflict of interest laws for a county prosecuting attorney to simultaneously serve as a member of the school district board of trustees. Op. of Miss. Ethics Comm. Op. No. 99-086-E.

A former district attorney or a former assistant district attorney may not be compensated by a person or business to defend a criminal defendant against any charges brought by the office of the district attorney when the former district attorney or the former assistant district attorney, while still serving in the office of district attorney, reviewed the criminal defendant's file and/or presented the criminal defendant's case to a grand jury; further this applies even if the former district attorney or the former assistant district attorney is to receive his or her compensation for defending the criminal defendant from a governmental entity due to the criminal defendant's indigent status. Op. of Miss. Ethics. Comm. Op. No. 99-112-E.

It is not a violation of the state conflict of interest laws for an individual to simultaneously serve as the county prosecuting attorney and as mayor of a municipality located within the county the individual serves as prosecutor; however, the requestor would be required to totally and completely recuse himself from any matter coming before the town's governing authority that concerned his county employer in order to be certain to avoid violating the statute. Op. of Miss. Ethics. Comm. Op. No. 01-009-E.

An individual may be appointed as a special assistant county prosecuting attorney while continuing to serve as county election commissioner. Op. of Miss. Ethics. Comm. Op. No. 02-045-E.

18. Attorney.

Where legislator/attorney who practices in same city where his father is councilman and his law associate is city attorney, legislator/attorney may perform those legal services contracted to him by his law associate which would not otherwise have been prohibited had legislator/attorney contracted from them directly. Op. of Miss. Ethics Comm. Op. No. 90-052-E.

As to whether conflict provisions affect legislator/attorney who practices in same city where his father is councilman and his law associate is city attorney, and legislator/attorney acts as assistant city attorney or as city prosecutor or city judge, since state of emancipation exists between father and son with no financial dependency or involvement, father would not be legally "interested" in any contract between city and his son, therefor conflict provisions are not applicable. However to avoid "use of office" violation, father/councilman should not participate in any city council proceedings which may concern or affect son, including vote or negotiation concerning him. Thus, as long as separation of powers problem does not exist, father/councilman does not "use his official position" and son is not prohibited from serving the city in categories indicated. Op. of Miss. Ethics Comm. Op. No. 90-052-E.

Law does not prohibit legislator/attorney from representing private clients in eminent domain matters brought about by Department of Economic Development, however legislator is cautioned that in serving as attorney for private clients there should be no use of his official position as set forth in subsection (1) of § 25-4-105. Op. of Miss. Ethics Comm. Op. No. 91-029-E.

Conflict of interest law prohibits law firm, of which member of state board is member, from representing state agency where such representation and contract require approval by state board. Moreover, board member's recusal as to voting and deliberations would avoid violation of subsection (1) only, not of subsection (2) or of Constitution Section 109. Op. of Miss. Ethics Comm. Op. No. 91-132-E.

Ethics in government laws are not violated should spouse of a city attorney/ex-legislator become employed by same city's school district. City and city school district are separate "authorities" under subsection (a) of § 25-4-103 and spouse may be employed by a separate authority. Op. of Miss. Ethics Comm. Op. No. 92-025-E.

Attorney who is member of legislature may represent private clients before state agencies such as Mississippi Public Service Commission. However, should client be other than private client and take on form of governmental entity, determination of fact would have to be made in each case as to whether or not ethics laws would become applicable. Op. of Miss. Ethics Comm. Op. No. 92-183-E.

Law prohibits attorney from becoming city attorney of a town whose mayor is attorney's secretary. Op. of Miss. Ethics Comm. Op. No. 93-130-E.

Violation of ethics laws would occur should spouse of councilperson serve as public defender following spouse's appointment by mayor in mayor-council form of city government. Op. of Miss. Ethics Comm. Op. No. 93-133-E.

Violation would occur should person be elected county supervisor and thereafter become affiliated with law firm which contracts with insurance company to represent certain county entities and public officials in same and other counties. Violation would not exist if law firm did not represent any of county personnel or entities of county or if supervisor chose not to affiliate with law firm. Neither recusal nor abstention prevents potential violation; while vote may be removed, prohibited interest in contract authorized by board lingers. Op. of Miss. Ethics Comm. Op. No. 93-216-E.

The appointment as assistant public defender of a salaried attorney in the county board attorney's law firm is not a violation if the individual and not the firm serves as board attorney; if the salaried attorney does not perform work for the board; and if the salaried attorney's public defender's salary does not accrue to the firm. Should any of the above occur, there is a violation of § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 95-008-E.

An attorney of a municipal governing board may simultaneously serve as the attorney for a municipal utilities commission whose members are appointed by the municipal governing board. The attorney should recuse himself from matters concerning the municipal utilities commission coming before the municipal governing board and the municipal governing authority coming before the municipal utilities commission. Op. of Miss. Ethics Comm. Op. No. 95-072-E.

One attorney may not simultaneously serve as municipal board attorney and as municipal judge for the same municipality as such duel service violates § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 95-072-E.

A former staff attorney for a state agency may contract with a company with which he was involved on behalf of the state in a permit process against that company if the contract with the company is unrelated to the permit process. Op. of Miss. Ethics Comm. Op. No. 95-090-E.

A board attorney for the county board of supervisors may simultaneously serve as a youth court referee/judge. Op. of Miss. Ethics Comm. Op. No. 95-139-E.

An attorney serving as county prosecuting attorney and/or attorney for the board of supervisors may simultaneously serve as a municipal board attorney. Op. of Miss. Ethics Comm. Op. No. 95-156-E.

An attorney serving as county prosecuting attorney may simultaneously serve as an attorney for the county board of supervisors. Op. of Miss. Ethics Comm. Op. No. 95-156-E.

An attorney for the county board of supervisors may represent criminal defendants before the county's courts but may not serve as a part-time public defender or as an indigent's counsel as it would violate § 25-4-105(3)(a) unless the exception in § 25-4-105(4)(b) applies. Op. of Miss. Ethics Comm. Op. No. 96-025-E.

An attorney for the county board of supervisors and members of the county board of supervisors may serve as members of their regional planning and development district. Op. of Miss. Ethics Comm. Op. No. 96-025-E.

A law firm whose members serve as the regular attorneys for the county board of supervisors may serve as bond counsel if provided for in their contract as the regular attorneys but may not have a separate contract to provide bond counsel services as it would violate § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 96-055-E.

Constitutional Section 109 and § 25-4-105(2) prohibit the law firm of a former state agency board member from being bond counsel on a bond issue that includes the state agency's project(s) within one (1) year of the end of the former member's term. Op. of Miss. Ethics Comm. Op. No. 96-099-E.

Constitutional Section 109 and § 25-4-105(2) and (3)(a) prohibit an attorney's continued employment as an associate with his law firm if the law firm contracts with the city's insurance organization to provide representation to the organization and/or the city after the attorney's election to the city council. Op. of Miss. Ethics Comm. Op. No. 97-008-E.

An attorney may not simultaneously serving as the attorney for the board of aldermen and as the municipal prosecuting attorney for the same municipality; however, if the governing authority decides not to appoint a prosecuting attorney and instead under its authority set forth in § 21-15-25 gives the municipal board attorney the duty to prosecute cases in the municipal court in his or her contract, then there would not be a violation of this section. Op. of Miss. Ethics. Comm. Op. No. 97-140-E.

A law firm may contract with either of two record storage companies that are partially owned by board members of governmental entities that the law firm represents as either their general or special counsel; however, there is the understanding that the contract between the law firm and either of the two storage companies will be for the storage of the law firm's records and not the records of the two governmental entities, and, that neither governmental entity will pay, either directly or indirectly, for the storage of the law firm's records with a record storage company partially owned by one of the governmental entities' board members. Op. of Miss. Ethics. Comm. Op. No. 97-143-E.

A state attorney assigned to provide counsel to the state Department of Human Services may serve on a county head start policy council when the head start program is funded with federal funds but also operated by the county human resource agency which does receive some funding from the state Department of Human Services; however, the state attorney should not be providing legal advice to the state Department of Human Services regarding matters that concern this particular county human resource agency should the state attorney be appointed to the county head start policy council. Op. of Miss. Ethics. Comm. Op. No. 97-156-E.

A city attorney's spouse may not sell real property to the city. Op. of Miss. Ethics Comm. Op. No. 98-019-E.

It is not a violation of the conflict of interest laws for a municipal board attorney to simultaneously serve on the county's economic development district's governing board since the municipality and the county are separate governmental entities. Op. of Miss. Ethics Comm. Op. No. 98-020-E.

The county prosecuting attorney, should not accept cases defending clients from administrative actions by the State Department of Human Services to disqualify them from receiving welfare and food stamp benefits because the attorney, as the county prosecuting attorney, may later have to prosecute the clients for violating the state's welfare and food stamp laws if the State Department of Human Services files sworn affidavits against them. Op. of Miss. Ethics Comm. Op. No. 98-043-E.

An attorney who is serving as counsel to the city's port commission may not serve as counsel to the port commission on any matters concerning a casino developer which has employed him to represent them. Op. of Miss. Ethics Comm. Op. No. 98-064-E.

The state conflict of interest laws do not prohibit the partners or associates of a law firm that is employed by a city as its board attorneys to accept DUI defense cases in other municipal courts' jurisdictions or in the county courts' jurisdictions. Op. of Miss. Ethics Comm. Op. No. 98-097-E.

An attorney may simultaneously serve as the board attorney for the board of supervisors and as the board attorney for a municipality located within the county since a county and a municipality are two separate governmental entities. Op. of Miss. Ethics Comm. Op. No. 99-017-E.

An attorney from the same firm as the attorney for the board of supervisors may accept a youth court appointment as a guardian ad litem as anticipated in § 43-21-121 without violating the state conflict of interest laws if the payments to the attorney for the guardian ad litem services are paid outside of the board attorney's firm with no financial benefit flowing to the firm. Op. of Miss. Ethics Comm. Op. No. 99-048-E.

A partner in a law firm may continue to personally serve as the attorney for a joint city/county port commission and continue to receive a monthly salary for his service as attorney to the commission even if a legislator joins the partner's law firm and the county port commission receives a loan from the Mississippi Department of Economic and Community Development from the Mississippi Port Revitalization Revolving Loan Fund. Op. of Miss. Ethics Comm. Op. No. 99-059-E.

A partner and/or his law firm may continue to be employed by the joint city/county port commission to perform legal work involving litigation and/or matters other than normal representation even if a legislator joins the partner's law firm and the county port commission receives a loan from the Mississippi Department of Economic and Community Development from the Mississippi Port Revitalization Revolving Loan Fund. Op. of Miss. Ethics Comm. Op. No. 99-059-E.

A partner and/or his law firm may not be employed by the joint city/county port commission to make an application through the port commission's parent body, the county board of supervisors, to the Mississippi Department of Economic and Community Development for the loan from the Mississippi Port Revitalization Revolving Loan Fund once a legislator joins the partner's law firm. Op. of Miss. Ethics Comm. Op. No. 99-059-E.

The employment of an attorney or a firm of attorneys as the municipal attorney or attorneys and the simultaneous contracting with the same attorney or firm to perform additional services not covered under the municipality's original employment agreement does not as such violate the conflict of interest laws; however, the municipal attorney or attorneys may not use the position of municipal attorney or attorneys to obtain contracts for additional services and compensation because such actions by the municipal attorney or attorneys would violate subsection (1) of this section. Op. of Miss. Ethics Comm. Op. No. 97-146-E.

An attorney for the board of trustees of a public school district serving simultaneously as a member of the board of directors of the school district's depository is prohibited if the school district's board attorney has a "material financial interest" in the school district's depository. Op. of Miss. Ethics. Comm. Op. No. 00-005-E.

A district attorney is prohibited from agreeing to allow his personal law office to be used for district attorney office duties when the district attorney's office will pay the utilities and/or the ad valorem taxes of the office for as long as it is used as a district attorney's office. Op. of Miss. Ethics. Comm. Op. No. 00-006-E.

An individual cannot continue to serve as the attorney for a nonprofit economic development foundation after being appointed to the board of a port authority when the port authority appoints two of its own board members to the nonprofit foundation's board and also funds the nonprofit foundation as such individual would then have a prohibited interest in the agreement between the port authority and the nonprofit economic development foundation due to the port authority's funding of the nonprofit foundation; a violation of the section will occur when the port authority's board funds the nonprofit economic development foundation employing the individual as its attorney with monies approved in a budget authorized by the port authority's board during the requestor's term of office or within one year thereafter, and an abstention or refusal will not prevent a violation of the section. Op. of Miss. Ethics. Comm. Op. No. 00-031-E.

A district attorney's office is prohibited from contracting for computer services with the son of the district attorney's business administrator. Op. of Miss. Ethics. Comm. Op. No. 00-054-E.

The attorney for the county board of supervisors can simultaneously serve as a special master in a lunacy hearing as the employing and appointing entities are separate authorities. Op. of Miss. Ethics. Comm. Op. No. 00-057-E.

A board attorney for the county board of supervisors who accepts payment from county funds for services as an indigent counsel in the county youth court violates the statute unless the services were reasonably available from two or fewer sources. Op. of Miss. Ethics. Comm. Op. No. 00-057-E.

A former district attorney is prohibited from being compensated by a person or business to defend a criminal defendant against any charges brought by the office of the district attorney when the former district attorney and/or his or her assistant district attorneys reviewed the criminal defendant's file during the former district attorney's term of office. Op. of Miss. Ethics. Comm. Op. No. 00-069-E.

A county officer or employee may simultaneously serve as a county E-911 commissioner without violating the statute as, for purposes of the conflict of interest laws, a county E-911 commission is a separate authority of the county from the general county government offices such as the county board of supervisors and the county sheriff's department. Op. of Miss. Ethics. Comm. Op. No. 00-074-E.

The attorney for a board of trustees of a public school district and/or the attorney's law firm is prohibited from having contracts to provide services to the school district other than the single contract to employ and fix the duties and compensation of such legal counsel as deemed necessary; but the attorney or law firm is not prohibited from performing and being compensated for the duties as legal counsel for the school district that are deemed necessary by the board of trustees when such duties and compensation are set forth in a single contract. Op. of Miss. Ethics. Comm. Op. No. 00-097-E.

An attorney or the attorney's law firm cannot be compensated as the closing attorney by the buyer or seller in regard to a mortgage loan funded by bond funds through Mississippi Home Corporation where the attorney's spouse has been appointed to the Mississippi Home Corporation's board of directors if the closing attorney fees incurred in connection with the mortgage loan are paid from monies provided the buyer/borrower from a three percent cash advance or a one percent premium cash advance or if the seller employs the closing attorney and the sales contract provides that the buyer/borrower will reimburse the seller for such costs and the buyer/borrower does so with a three percent cash advance or a one percent premium cash advance. Op. of Miss. Ethics. Comm. Op. No. 00-101-E.

An attorney or the attorney's law firm cannot be compensated as the closing attorney by the buyer or seller in regard to a second mortgage loan of which the Mississippi Home Corporation is a party by way of its down payment assistance program when the attorney's spouse has been appointed to the Mississippi Home Corporation's board of directors. Op. of Mss. Ethics. Comm. Op. No. 00-101-E.

The attorney for the county board of supervisors would violate the statute should the county board of supervisors contract with a bank to serve as its depository, or for any other reason, if the attorney was a member of the bank's board of directors and had a material financial interest in the bank. Op. of Miss. Ethics. Comm. Op. No. 00-139-E.

It is not a violation of the state conflict of interest laws for the attorney for the county board of supervisors to simultaneously serve as a youth court referee/judge; however, the attorney would be required to recuse herself from any matter coming before the board of supervisors that concerned the chancellor and/or the youth court and from any matter coming before the youth court that concerned the members of the board of supervisors. Op. of Miss. Ethics. Comm. Op. No. 01-007-E.

It is not a violation of the state conflict of interest laws for an individual to simultaneously serve as the county public defender and as a member of a municipal board located within the county the individual serves as public defender where the public defender's office is funded entirely by the county without any participation from the city and the public defender does not appear in city court and thereby does not become involved in cases involving a city arrest including initial appearance hearings. Op. of Miss. Ethics. Comm. Op. No. 01-020-E.

The attorney for the board of supervisors may not also serve on the advisory board of a bank serving as a county depository. Op. of Miss. Ethics. Comm. Op. No. 02-055-E.

19. Other.

Law is not violated when County Medical Examiner Investigator has Deputy who is simultaneously a director of local funeral home. Op. of Miss. Ethics Comm. Op. No. 92-125-E.

Ethics law is not violated should designated pathologist be named State Medical Examiner and serve in that capacity, without compensation, while continuing to conduct autopsies as pathologist. However, commission voices grave concern as to practicality and propriety of having pathologist conducting large percentage of state's autopsies also responsible for rules and regulations under which he and his professional colleagues perform public duties, and path he would be forced to follow in order not to fall into violation of using official position for pecuniary benefit may be so narrow as to limit effectiveness as State Medical Examiner. Op. of Miss. Ethics Comm. Op. No. 92-132-E.

Law prohibits employee of county tax assessor's office from writing bail bonds returnable to county; any bond written by county employee or his bail bonding company and accepted by county court and returnable to county would constitute prohibited contract between the county and employee and his company. It is of no consequence whether the person placed under bond may be charged with felony or misdemeanor, deciding factor being that bond is accepted by and returnable to county. Duties and responsibilities of county employee must be kept entirely separate and distinct from any pursuit of his bail bond business. Op. of Miss. Ethics Comm. Op. No. 93-037-E.

Law prohibits assistant data clerk and secretary for county tax assessor from accepting fee from citizen to furnish citizen with information from property record cards and tax receipts, if public servant conducted such work during regular working hours, unless such duty was part of her official duties, and if it were considered her official duty, any receipt of fee would constitute violation of subsection (1). Section would also be violated if any of records or facilities of tax assessor which were not available to and freely used by public after hours were used by public servant after hours in fulfilling desired request for fee. Op. of Miss. Ethics Comm. Op. No. 93-175-E.

Where manager is hired by state to help manage two federal grants, and manager's two children seek to become employed by one of the two grants, hiring and continued employment of children would constitute use of manager's official position for pecuniary benefit for a relative in violation of code subsection (1). Additional possible violations under subsection (3)(d) could exist but must be found through determination of facts. Commission adds that situation raises suspicion among public and reflects unfavorably upon state. In relation to 93-206-E(n 19) add: "As to money paid to employee's children, department should be guided by § 25-4-113." Op. of Miss. Ethics Comm. Op. No. 93-206-E.

Ethics laws prohibit volunteer fire department from purchasing gasoline from service station owned by son of county supervisor and from which supervisor receives monthly income. Op. of Miss. Ethics Comm. Op. No. 93-208-E.

A county tourism commission may not contract with a moving and storage company partly owned by a member of the commission. Op. of Miss. Ethics Comm. Op. No. 95-007-E.

A municipality may not purchase water/sewer supplies from the municipality's certified water/sewer operator when the certified water/sewer operator is the municipality's agent through a monthly service contract with the municipality. Op. of Miss. Ethics Comm. Op. No. 95-027-E.

A county conservation district commissioner may not participate in a water control project administered by a state agency and funded by the federal government when the commissioner's land was submitted to the commissioner's district board for approval by a local drainage district. Op. of Miss. Ethics Comm. Op. No. 95-030-E.

A county tourism commission may not pay restaurant and motel expenses for groups and meetings related to tourism when the restaurant and motel are managed or owned by members of the county tourism commission. Op. of Miss. Ethics Comm. Op. No. 95-036-E.

A state entity which has as a primary responsibility the approval of financing for projects that create jobs and provide investment in the state may receive as an appointment to its board of directors an individual who serves on the advisory board of a large bank that conducts business with the state entity, provided the individual's interest in the bank is "de minimis." Op. of Miss. Ethics Comm. Op. No. 95-038-E.

A board member of a non-profit corporation that conducts a local festival may be appointed to the municipality's convention and visitors bureau board of directors when prior to the appointment the convention and visitors bureau had given impact grants to the non-profit corporation to promote and advertise the festival. Op. of Miss. Ethics Comm. Op. No. 95-048-E.

A chancery clerk may upon the expiration of his term accept immediate employment with the county's depository. However, the chancery clerk was cautioned regarding Section 25-4-105(1) and (3)(e). Op. of Miss. Ethics Comm. Op. No. 95-101-E.

A chancery clerk's entering into a consultant contract with one of the county's depositories violates Section 25-4-105(3)(a). The chancery clerk also was cautioned regarding Section 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 95-102-E.

An individual elected county coroner may not become a partner in an ambulance service which contracts with the county in which the coroner was elected to serve. Op. of Miss. Ethics Comm. Op. No. 95-122-E.

A civil service commissioner is not prohibited from serving on the civil service commission because he represented a current client before the civil service commission prior to his appointment. However, the commissioner was cautioned regarding § 25-4-105 (1), (3)(d) and (5). Op. of Miss. Ethics Comm. Op. No. 96-002-E.

An uncompensated volunteer fire fighter may not sell fire-fighting equipment to a municipally owned fire department on which he serves as a volunteer since to do so would violate § 25-4-105(3)(a). Op. of Miss. Ethics Comm. Op. No. 96-011-E.

A community college foundation that is controlled by a community college board of trustees may allow certificates of deposit to mature and retain bank stock with the bank of a new appointee to the board of trustees since both contracts were prior to his term of office. However, the foundation was cautioned regarding Constitutional Section 109 and § 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 96-012-E.

Constables may enter into contracts with the county they are elected to serve to collect delinquent fines and be paid a contingent fee and not be in violation of § 25-4-105(3)(a) since specific authority to so contract is set forth in §§ 19-3-4(3) and 25-7-27(3). Op. of Miss. Ethics Comm. Op. No. 96-046-E.

A board member of a water and sewer district may simultaneously serve as a board member of a property owners' association that is the district's largest customer as long as there are no contracts between them that would violate Constitutional Section 109 and § 25-4-105(2). However, the board member was cautioned regarding § 25-4-101 and § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-054-E.

A constable may use his personal vehicle that he also uses as his constable vehicle to serve process for a law firm if he removes the insignia and decals that identify it as a constable vehicle. However, the constable was cautioned regarding § 25-4-101 and § 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 96-064-E.

An individual may serve on a regional housing authority board while simultaneously being employed as the executive director of a nonprofit corporation that develops low cost housing as long as the nonprofit corporation is not funded by, or contracting with, the regional housing authority. However, the individual was cautioned regarding Constitutional Section 109 and § 25-4-105(1), (2), (3)(a) and (5). Op. of Miss. Ethics Comm. Op. No. 96-064-E.

Any decision made by a community college trustee's board to allow a portion of its funding to be used, either by it or another college district, for the purpose of providing training services to the trustee's business results in a violation of Constitutional Section 109 and § 25-4-105(2). The board was also cautioned regarding § 25-4-101 and § 25-4-105(1) and (5). Op. of Miss. Ethics Comm. Op. No. 96-109-E.

Section 25-4-105(3)(a) prohibits the county's payroll clerk from contracting to provide additional payroll services to the county, including the chancery clerk's office, when the additional payroll services are paid for from the county's funds. Op. of Miss. Ethics Comm. Op. No. 97-029-E.

Section 25-4-105(3)(a) prohibits a city firefighter from having a material financial interest, as defined in § 25-4-103(k), in a bail bonding company contracting with the city. Op. of Miss. Ethics Comm. Op. No. 97-031-E.

Section 25-4-105(3)(b) prohibits any officer or employee of a governmental entity from being a direct or indirect purchaser at any advertised sale of surplus property made by his or her governmental entity. Op. of Miss. Ethics Comm. Op. No. 97-038-E.

Members of advisory boards (i.e., architectural and historic review commission; building and housing board of adjustments and appeals; the electrical examining board; and the parks and recreation commission) who are appointed by the mayor and confirmed by the city council may not contract with the city, except where such goods or services involved are reasonably available from two or fewer commercial sources, provided such transactions comply with the public purchasing laws. Op. of Miss. Ethics. Comm. Op. No. 97-149-E.

A governmental board with authority over certain federal grant funds may not expend those funds on contracts the board has entered into with private, nonprofit associations when the governmental board's enabling legislation requires that the executive officers, or their designees, of certain of these nonprofit associations be voting members of the governmental board. Op. of Miss. Ethics. Comm. Op. No. 97-155-E.

A governmental board's nonvoting member's private nonprofit association is prohibited from contracting with a governmental board should it qualify as a business under the definition set forth in subsection (c) of § 25-4-103 and should the nonvoting member have a material financial interest in the private nonprofit association as defined in subsection (k) of § 25-4-103. Op. of Miss. Ethics. Comm. Op. No. 97-155-E.

A county may purchase sand and fill dirt from an estate, even though one of the heirs is the spouse of an employee of the county who serves as the county's receiving clerk since the county receiving clerk does not authorize purchasing contracts or approve and evaluate bids. Op. of Miss. Ethics Comm. Op. No. 98-016-E.

A nonprofit community housing development organization that is a direct subrecipient of HOME set-aside funds may allow the parent of one of its staff persons to receive homeowner rehabilitation funds for the parent's home since a nonprofit community housing development organization and its staff persons are not subject to the state conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 98-030-E.

It is not a violation of the state conflict of interest laws for a regional library to select as its depository a bank that employs the daughter of the regional library's assistant director. Op. of Miss. Ethics Comm. Op. No. 98-036-E.

A county election commissioner as a public servant of the county and as the owner of a lawn and tree service would be in violation of subsection (3)(a) should the county board of supervisors contract with his lawn and tree service; however, since the election commission is a separate authority of the county, there would not be a violation if the board of supervisors let the contract to the election commissioner's lawn and tree service as the lowest and best bidder after competitive bidding and three or more legitimate bids were received as allowed by subsection (4)(b). Op. of Miss. Ethics Comm. Op. No. 98-044-E.

A Mississippi limited liability company may borrow its funds to finance the construction of golf villas with a national banking corporation and/or from an entity in which the state levee board president, his father, his brothers and his sister each own a minority interest since there are no contracts with the state levee board in which the state levee board president has a material financial interest. Op. of Miss. Ethics Comm. Op. No. 98-045-E.

A state employee of a state agency can be transferred to another state agency in a merger of certain state services, even though the state employee was directly concerned and personally participated in the negotiations of the agreement between the two state agencies regarding the merger, since the state employee is not leaving the public sector and there are no facts or circumstances that indicate in any way that the state employee used his current position to obtain a pecuniary benefit for himself. Op. of Miss. Ethics Comm. Op. No. 98-049-E.

A city may contract with an accounting firm to do an audit for the city based upon proposals, even though the accounting firm has a partner whose spouse is a member of the zoning board, if the zoning board member exercises no control, direct or indirect, over the city's contract with the accounting firm employing the zoning board member's spouse. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

A city may not contract with an architect to design a new fire station where the architect is presently on the board of architectural review or has been on the board of architectural review within the past year unless such services involved are reasonably available from two or fewer commercial sources, provided such transactions comply with the public purchasing laws. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

It is not a violation of the state conflict of interest laws for the city to award a construction contract to the son of a member of the city's board of architectural review. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

Members of the convention center advisory committee are deemed to be "public servants," even if they merely make recommendations to the governing officials, do not receive any compensation or make any decision whatsoever. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

Members of the board of directors of the heritage center are public servants of the city for purposes of the state conflict of interest laws. Op. of Miss. Ethics Comm. Op. No. 98-051-E.

A member of the Mississippi Juvenile Justice Advisory Committee may not enter into a personal service contract with the Mississippi Department of Human Services. Op. of Miss. Ethics Comm. Op. No. 98-055-E.

It is not a violation of the state conflict of interest laws for an industrial park, jointly owned by a county and a city, to sell property to the brother of the county's chancery clerk/county administrator or to sell property to a corporation owned, in whole or in part, by the brother of the county's chancery clerk/county administrator unless the chancery clerk/county administrator has a personal or pecuniary interest in the brother's business for which the property is being purchased or the brother's corporation by which the property is being purchased. Op. of Miss. Ethics Comm. Op. No. 98-065-E.

A water and sewer district may continue to contract with a bank if a member of the bank's advisory board is appointed to fill a vacancy on the water and sewer district's board of commissioners if his financial interest in or compensation from the bank is a "de minimis" interest. Op. of Miss. Ethics Comm. Op. No. 98-089-E.

Subsection (3)(a) of this section prohibits a city's full-time water and sewer superintendent from performing work for the city that is not related to and not contemplated by his present job title when the work will be performed outside his normal work hours and he will be paid separately from his compensation as water and sewer superintendent. Op. of Miss. Ethics Comm. Op. No. 98-103-E.

Subsection (3)(a) of this section prohibits a city's full-time employee for the garbage collection and street maintenance departments from being paid by the city in addition to his normal salary to do clean-up work in the city hall after his usual 8-hour day. Op. of Miss. Ethics Comm. Op. No. 98-103-E.

Subsection (3)(a) of this section prohibits a city's full-time dispatcher during his off time from doing painting and other miscellaneous carpenter work for the city when he bills the city and is paid by the city as with any other independent contractor. Op. of Miss. Ethics Comm. Op. No. 98-103-E.

A city may contract with a computer business when 50% of the computer business is owned by a former employee of the city, so long as the transaction does not result in the former employee being compensated by the computer business, or any other person or business, in relation to any case, decision, proceeding, or application with respect to which he was directly concerned or in which he personally participated during the period of his employment with the city. Op. of Miss. Ethics Comm. Op. No. 98-106-E.

A deputy circuit clerk, having election duties and serving as a deputy registrar, may not contract with the county election commission to print the election ballots for the county unless the exceptions in subsections (4)(b) or (d) of this section apply. Op. of Miss. Ethics Comm. Op. No. 98-116-E.

An employee of an industrial foundation which contracts with the county economic development district may contract with the county election commission to print the election ballots for the county. Op. of Miss. Ethics Comm. Op. No. 98-116-E.

It is not a violation of the state conflict of interest laws for an individual to simultaneously serve as a member of the State Parole Board and in the part-time position of county civil defense director; however, he will be required to recuse himself from any parole matter coming before the State Parole Board that involves an inmate arrested by a law enforcement entity of and sentenced by a court of the county he serves as civil defense director. Op. of Miss. Ethics Comm. Op. No. 99-007-E.

An employee of the Mississippi Department of Economic and Community Development whose employment duties are unrelated to housing may simultaneously serve as a member of the Board of Directors of the Mississippi Home Corporation. Op. of Miss. Ethics Comm. Op. No. 99-012-E.

The Department of Transportation may not sell real property to one of its employees under its statutory authority to determine real property to be an uneconomic remnant and to sell the real property to adjoining landowners for not less than market value. Op. of Miss. Ethics Comm. Op. No. 99-019-E.

A state employee may coauthor publications that pertain to subjects in the state employee's area of expertise where the publications' topics are unrelated to the current research with the state agency, the work on the publications will be performed during personal time and will not involve the use of the state agency's facilities, equipment, research and/or personnel, the employee will receive no pecuniary benefit for the work on the publications, and the employee's coauthoring the publications will comply with all of the state agency's policies and procedures. Op. of Miss. Ethics Comm. Op. No. 99-040-E.

It is not as such a violation of the state conflict of interest laws for a public, nonprofit corporation's board of director's to initiate a petition to have the public, nonprofit corporation provide the state with its automobile license plates. Op. of Miss. Ethics Comm. Op. No. 99-044-E.

It is not a violation of the state conflict of interest laws for the city to sell a building to and/or purchase land from the brother of a public servant of the city. Op. of Miss. Ethics Comm. Op. No. 99-057-E.

A local governmental entity's board, including a county board of supervisors or a municipal board, is prohibited from authorizing funding to a nonprofit corporation when a member of the local governmental entity's board, including a county supervisor or a municipal board member, is also a member of the board of director's of the nonprofit corporation. Op. of Miss. Ethics Comm. Op. No. 99-061-E.

The state conflict of interest laws do not as such prohibit a state employee from contracting to provide computer consulting services to a county when the state employee is to be paid solely from the chancery clerk fee account. Op. of Miss. Ethics Comm. Op. No. 99-089-E.

An employee of the State Medical Examiner's Office may serve as county coroner/medical examiner investigator if the State Medical Examiner's Office is willing and able to put into place procedures and restrictions that will prevent the employee from being involved, either directly or indirectly, in any matter, especially autopsies, investigations, training, testing and reporting, that concern the county the employee serves as coroner. Op. of Miss. Ethics Comm. Op. No. 99-090-E.

An appointed city clerk's daughter may accept employment with the city's park and recreation department if the city clerk is totally and completely removed from the child's initial employment process and is not involved, directly or indirectly, in supervising or evaluating the child's work or in matters concerning the child's compensation. Op. of Miss. Ethics Comm. Op. No. 99-097-E.

The employees of a business that is contracting with the county to provide commitment services are prohibited from being appointed as deputy chancery clerks if the employees have a material financial interest in the business contracting with the county. Op. of Miss. Ethics. Comm. Op. No. 00-043-E.

The statute does not prohibit one spouse from serving as a municipality's election commissioner and the other spouse from selling insurance to the municipality as an election commissioner exercises no control, direct or indirect, over a municipality's board of aldermen's decision to purchase insurance for the municipality. Op. of Miss. Ethics. Comm. Op. No. 00-047-E.

It is not as such a violation of the state conflict of interest laws for a city to purchase from an automobile parts company that employs the father of a city employee; however, the city department in which the city employee was in charge of purchasing could not purchase from the auto parts company, as such would result in the city employee using his or her official position to obtain a pecuniary benefit for a relative and/or a business in which he or she was associated. Op. of Miss. Ethics. Comm. Op. No. 00-052-E.

A fair commission can employ one spouse as the facility manager of a facility center and the other spouse as the facility secretary of the same facility center; however, the spouse who is the facility manager would be prohibited from taking any actions that would result in the facility secretary spouse retaining and/or receiving a pecuniary benefit, such as actions that allowed the facility secretary to remain employed, be re-employed, receive a raise, receive additional benefits, receive a promotion, and/or receive other forms of compensation or income. Op. of Miss. Ethics. Comm. Op. No. 00-056-E.

A retail store business owned by a chancery clerk's corporation was prohibited from being a vendor with the county's community hospital. Op. of Miss. Ethics. Comm. Op. No. 00-073-E.

A retail store business owned by a chancery clerk's corporation was prohibited from being a vendor with the county's regional library system. Op. of Miss. Ethics. Comm. Op. No. 00-073-E.

A state employee's company is not prohibited by the state conflict of interest laws from having a subconsultant contract with a totally separate government from the state such as with a city when the contract is paid solely with funds of the other government and the state employee as the director of a state bureau has no control or approval, direct or indirect, over the separate government's project or its funding. Op. of Miss. Ethics. Comm. Op. No. 00-098-E.

A state employee's company is not prohibited by the state conflict of interest laws from having a contract to provide professional services with a totally separate government from the state, such as with a city, when the contract is paid solely with funds of the other government and the state employee has no control or approval, direct or indirect, over the separate government's contract and related services, including funding. Op. of Miss. Ethics. Comm. Op. No. 00-099-E.

A deputy chancery clerk may simultaneously serve as a part-time E-911 dispatcher for the same county without violating the statute. Op. of Miss. Ethics. Comm. Op. No. 00-100-E.

A care center operated by the sister of an executive director of a state agency could continue to receive Block Grant funding through a certificate or subgrant program administered by the state agency as the sister was not a relative for purposes of the state conflict of interest laws and the sister's care center was not a business in which the executive director was associated. Op. of Miss. Ethics. Comm. Op. No. 00-104-E.

A deputy circuit clerk was prohibited from being employed and compensated by the county election commission to serve as the secretary of the election commission as the circuit clerk's office's election duties and the county election commission's election duties were so intertwined that it was unreasonable to conclude that they were in separate authorities of the county government in regard to carrying out elections. Op. of Miss. Ethics. Comm. Op. No. 00-105-E.

A member, officer, or director of the volunteer fire department is prohibited from serving as a commissioner of a fire protection district and simultaneously maintaining his or her position with the volunteer fire department, as long as there are contractual arrangements between the district and the fire department authorized by the fire protection board during his or her term or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-109-E.

An appointed commissioner of a fire protection district is prohibited from serving as either a member, officer, or director of a volunteer fire department for as long as there are contractual arrangements between the district and the fire department authorized by the fire protection board during his or her term or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 00-109-E.

A deputy county tax assessor's election and compensation as a county election commissioner would not violate the conflict of interest laws; however, he would be required to totally and completely recuse himself from all matters coming before the county election commission that concerned the county tax assessor/collector. Op. of Miss. Ethics. Comm. Op. No. 00-113-E.

An assistant road manager's election and compensation as a county election commissioner would not violate the conflict of interest laws; however, he would be required to totally and completely recuse himself from all matters coming before the county election commission that concerned the county board of supervisors and/or any member thereof. Op. of Miss. Ethics. Comm. Op. No. 00-113-E.

A broker who was an agent of a city was prohibited from being a purchaser, direct or indirect, at any sale made by him in his official capacity, that is, the broker, by way of an attached exclusive right-to-sell listing contract, could not purchase from the city property which an attached exclusive right-to-sell listing contract gave the broker/agent the exclusive right to sell on behalf of the city; however, the broker was not prohibited from being a purchaser from the city at any sale by the city not made by him in his capacity as the city's broker/agent as authorized in an attached exclusive right-to-sell listing contract. Op. of Miss. Ethics. Comm. Op. No. 00-121-E.

It was not a violation of the statute for an individual to simultaneously serve as a county's E911 council's appointed director and as the county and city's emergency management council's appointed assistant director, with the understanding that the individual was prohibited from being paid as both the county's E911 council's appointed director and as the county and city's emergency management council's appointed assistant director during the same work schedule. Op. of Miss. Ethics. Comm. Op. No. 00-123-E.

It is not a violation of the statute for an individual to simultaneously serve as a county and city's emergency management council's appointed director and as the county and city's fair commission's appointed part-time fair manager, with the understanding that the individual is prohibited from being paid as both the county and city's emergency management council's appointed director and as the county and city's fair commission's appointed part-time fair manager during the same work schedule. Op. of Miss. Ethics. Comm. Op. No. 00-124-E.

A county's part-time veterans service officer is prohibited from being a contractor with the county as the grant administrator of the grant applied for and received by the county. Op. of Miss. Ethics. Comm. Op. No. 00-136-E.

An individual can resign as an administrative assistant in the office of the city clerk and accept an appointment by the mayor as a city election commissioner and serve as a city election commissioner if confirmed by the city council without violating the state conflict of interest laws. Op. of Miss. Ethics. Comm. Op. No. 00-138-E.

A business in which a city advisory board member has a material financial interest can sell goods and services to the city after the effective date of the advisory board member's resignation; however, if a city's park board has the authority to recommend or approve the recreation equipment purchased by the city's governing board, then its members would be prohibited not only during their term but for one year thereafter from having an interest, direct or indirect, in the city's contract to purchase the recreation equipment. Op. of Miss. Ethics. Comm. Op. No. 00-140-E.

It is not a violation of the statute for an individual to simultaneously serve as the executive manager of a county emergency medical service district and as the county's elected coroner, with the understanding that the individual will be prohibited from being paid his salary as the executive manager of the county emergency medical service district and his fees as the county's elected coroner during the same work period, that is, the individual should take personal leave from his job as the district's executive manager when performing the duties of coroner if elected to that office. Op. of Miss. Ethics. Comm. Op. No. 01-008-E.

A county could purchase small engine repairs from the only small engine shop located within the county where the shop was owned by the father of a constable serving the county and the constable was employed by the shop as requiring the county to take small engine equipment, such as chain saws and weed cutters, to surrounding municipalities located outside of the county for repairs would have been an extreme hardship and would have substantially affected prompt repair of roads, courthouse grounds, and other county property. Op. of Miss. Ethics. Comm. Op. No. 01-015-E.

A county could not purchase small engine equipment from the only small engine shop located within the county where the repair shop was owned by the father of a constable serving the county and the constable was employed by the shop as requiring the county to purchase small engine equipment in surrounding municipalities would not create a hardship. Op. of Miss. Ethics. Comm. Op. No. 01-015-E.

A chancery clerk could lease a building to the United States Department of Agriculture where the county the chancery clerk served made an annual appropriation to the Natural Resources Conservation Service, which was one of the offices occupying the building, as there was no contract with the county whereby the chancery clerk or any business in which he had a material financial interest was agreeing to provide a service or a commodity to the county and the county was not a party to the lease and the funding the county provided to the Natural Resources Conservation Service was not paid by way of a contract. Op. of Miss. Ethics. Comm. Op. No. 01-025-E.

An employee of the Institutions of Higher Learning can contract with the federal government or with municipalities to provide services as a software instructor. Op. of Miss. Ethics. Comm. Op. No. 01-028-E.

Where one spouse is employed as the fair manager of a fair commission and the other spouse is employed as ticket seller, board secretary, and part-time office assistant of the fair commission. The spouse who is the fair manager is prohibited from taking any actions that would result in the spouse retaining and/or receiving a pecuniary benefit. Op. of Miss. Ethics. Comm. Op. No. 01-036-E.

A city's part-time employee, who is also a licensed electrician and air-conditioning specialist, is prohibited from being paid by the city for selling parts and equipment and performing repair service on the city's air-conditioning unit. Op. of Miss. Ethics. Comm. Op. No. 01-052-E.

A county engineer who represents the county on a wastewater and solid waste management district's technical review committee cannot be employed by a company to manage its public works contract with a city if the company remains a contractor with the wastewater and solid waste management district and if the county engineer's compensation from the company results in a material financial interest in the company. Op. of Miss. Ethics. Comm. Op. No. 01-068-E.

A firefighter employed by a municipality may not engage in the sales and service of fire fighting equipment, such as fire extinguishers and fire suppression systems, in a sideline business on his off duty and private time within the municipality the firefighter is employed to serve when the duties assigned the firefighter require the firefighter to inspect such fire fighting equipment within the municipality to enforce the municipality's fire code. Op. of Miss. Ethics. Comm. Op. No. 01-086-E.

A municipal firefighter is not prohibited by the state conflict of interest laws from engaging in a sideline business in his off-duty and private time that is totally and completely unrelated to the municipal firefighter's public duties. Op. of Miss. Ethics. Comm. Op. No. 01-086-E.

An individual cannot serve as a volunteer assistant fire chief of a fire department that has full-time firefighters employed by the city where one of the city's full-time firefighters is the individual's child as a supervisor/subordinate relationship would exist between the assistant fire chief and his child. Op. of Miss. Ethics. Comm. Op. No. 01-093-E.

The niece of a municipal court clerk can act as a bail bond soliciting agent and write bail bonds for the release of defendants held in the custody of the police department headed by the chief of police. Op. of Miss. Ethics. Comm. Op. No. 01-094-E.

The transfer and promotion of the sister of a city clerk to the position of deputy city clerk does not violate the statute. Op. of Miss. Ethics. Comm. Op. No. 01-106-E.

A city's policy that prohibited a supervisor/subordinate relationship between relatives that were city employees reflected state law. Op. of Miss. Ethics. Comm. Op. No. 01-106-E.

The state conflict of interest laws will not prohibit a circuit clerk from employing his wife in the circuit clerk's office if the wife is paid solely from the circuit clerk's fees and the wife's compensation combined with that of the circuit clerk does not exceed the statutory limit of $ 83,160.00 as allowed by Section 9-1-43(2). Op. of Miss. Ethics. Comm. Op. No. 01-111-E.

A city's public works director and his partners can donate property for an access road to an industrial park to a county or the county can take the property by eminent domain when the city is funding part of the cost of the access road and the city's public works director is the appointed construction manager on the access road project. Op. of Miss. Ethics. Comm. Op. No. 01-112-E.

A former board member of an economic development partnership established by local and private legislation as a not-for-profit corporation to carry-out economic development for the county and city with tax revenues may not be employed by the partnership within one year of the end of his term as a board member of the partnership. Op. of Miss. Ethics. Comm. Op. No. 02-002-E.

A former board member of an economic development partnership established by local and private legislation as a not-for-profit corporation to carry-out economic development for the county and city with tax revenues may not be employed by the partnership within one year of the end of his term as a board member of the partnership. Op. of Miss. Ethics. Comm. Op. No. 02-006-E.

A county road department worker may not write bail bonds as an agent for a bail bonding company for individuals being held in the custody of the law enforcement entity of the county employing the road department worker. Op. of Miss. Ethics. Comm. Op. No. 02-007-E.

An individual may be appointed to the position of deputy coroner if that individual is currently employed with a funeral home that services county residents and is sometimes used by the county; however, the individual would then be prohibited from using his position to provide a pecuniary benefit to his funeral home employer and the funeral home would be prohibited from contracting with the county to transport bodies, perform an autopsy, or burying paupers as long as the deputy coroner was employed by the funeral home. Op. of Miss. Ethics. Comm. Op. No. 02-009-E.

A county coroner may be employed and compensated by a local funeral home as well as receive the statutory fees for the duties of county coroner. Op. of Miss. Ethics. Comm. Op. No. 02-011-E.

A county board of supervisors may approve statutory expenses for a county deputy coroner, who is also employed by a local funeral home while acting as county deputy coroner, but if the deputy coroner has a material financial interest in the funeral home, the county board of supervisors may not contract with the funeral home employing the deputy coroner for any services, such as transporting bodies, performing an autopsy, or burying paupers as long as the deputy coroner is employed by the funeral home. Op. of Miss. Ethics. Comm. Op. No. 02-011-E.

A city fireman may not also work in a compensated part-time position for the city's public works department. Op. of Miss. Ethics. Comm. Op. No. 02-027-E.

A city garbage department worker may not write bail bonds as an agent for a bail bonding company for individuals being held in the custody of the law enforcement entity of the city employing the garbage department worker. Op. of Miss. Ethics. Comm. Op. No. 02-029-E.

A state employee and/or his business may not train other governmental entities outside of the boundaries of the State of Mississippi in the use and operation of a federal computer program and charge a fee for such service. Op. of Miss. Ethics. Comm. Op. No. 02-034-E.

It is not a violation of the conflict of interest laws for a town clerk to sign a police officer/spouse's paycheck if signing the paycheck is an administrative action only based on the town board's setting the salary and approving payment. Op. of Miss. Ethics. Comm. Op. No. 02-039-E.

A former planning and development district employee may, without waiting a specified period of time after termination from the planning and development district, serve as the director of a state agency's division that recommends and/or approves grants and funding to planning and development districts; however, the division director may not be involved as a compensated employee of the state agency with its division's decision on a grant or funding for the division director's former planning and development district employer if the division director was directly concerned with or personally participated in the application or decision of the planning and development district to seek the grant or funding while an employee of the planning and development district. Op. of Miss. Ethics. Comm. Op. No. 02-040-E.

It is not as such a violation of the conflict of interest laws for a former city employee to immediately contract with the city upon his or her termination from the city. Op. of Miss. Ethics. Comm. Op. No. 02-057-E.

A water management district may not purchase land from a bank when several of the district's directors are stockholders of the bank, and such prohibition will extend until one after the terms of the district directors. Op. of Miss. Ethics. Comm. Op. No. 02-067-E.

State agency employees are not prevented from performing inspections for a private inspection service similar to their state jobs for compensation; however, they are prohibited from using the agency's equipment, facilities or other resources to conduct the inspections for the private business, and will violate the statute should they conduct the private inspections when they have not completed their required work hours for their state employment positions or taken personal leave. Op. of Miss. Ethics Comm. Op. No. 02-086-E.

City employing a firefighter may not award a bid to a paving business in which the firefighter has a material financial interest, where the paving services do not meet the exception of "reasonably available from two (2) or fewer commercial sources" as set forth in § 25-4-105(4)(d). Op. of Miss. Ethics Comm. Op. No. 02-087-E.

The director of a county emergency medical service district may simultaneously serve as the county's coroner/medical examiner investigator if elected to that office. Op. of Miss. Ethics Comm. Op. No. 02-101-E.

A Department of Correction employee may also hold the position of county supervisor. Op. of Miss. Ethics Comm. Op. No. 02-105-E.

A city water department superintendent is prohibited from having a material financial interest in a company managing the city's water treatment plant. Op. of Miss. Ethics Comm. Op. No. 02-107-E.

A convention and visitors bureau board member is prohibited from having an interest, direct or indirect, in any contract authorized by the board of which he serves during his term or for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau board member is prohibited from serving as an officer/director of a nonprofit organization that receives publicly funded grants from the bureau. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau is prohibited from providing grant funding to a nonprofit historic foundation when a member of the bureau board serves as an officer/director of the historic foundation. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau is prohibited from providing grant funding to a nonprofit historic foundation to provide advertising and promotional material when a bureau board member serves as an president of the historic foundation. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau is prohibited from providing grant funding to a nonprofit historic foundation to provide advertising and publish promotional material for a pilgrimage when a bureau board member is an antebellum home owner who participates in the pilgrimage and receives fees from the nonprofit historic foundation from ticket sales paid by the general public to tour the antebellum homes. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not purchase and place tourism related advertising with a television station and newspaper that both have a bureau board member as one of their owners. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract with one of its board members, or a business with which the member is associated, to prepare and print pilgrimage brochures on a cost-only basis. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract to provide grant funding to a nonprofit downtown festival for sponsorship and advertising of the festival when a bureau board member is an officer/director thereof. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau is not prohibited from contracting with a non-profit downtown festival when one of the bureau board members is one of a class of business owners who may derive some benefit from the festival. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract to provide grant funding to a nonprofit downtown festival for sponsorship and advertising of the festival when bureau board members are restaurant owners who contract with the festival to sell prepared foods to attendees. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract to provide grant funding to a nonprofit arts council for a music festival and other related programs when a bureau board member is an officer/director of the council. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract to provide grant funding to a tournament organization for hotel/motel rebates when a bureau board member is a manager/employee of a hotel/motel receiving benefits from the rebates. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not lease office space from a chamber of commerce when a bureau board member is also an officer/director of the chamber. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau board member is not prohibited from being a member of a chamber of commerce which has a lease with the bureau. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract with a chamber of commerce to provide services when a bureau board member is also an officer/director of the chamber. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may contract with a chamber of commerce to provide services when a bureau board member is also a member of the chamber. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau may not contract to provide funding to a non-profit new organization formed from a merger of the chamber of commerce and an economic development association when a bureau board member is also an officer/director of the new organization. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A convention and visitors bureau board member is not prohibited from being a member of a nonprofit new organization that receives budgetary funding by contract from the bureau. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

Local and private statutes requiring members of nonprofit organizations be appointed to a convention and visitors bureau board are not prohibited by conflict the state conflict of interest laws, however, circumstances of individual board members can violate the state conflict of interest laws when such dual service exists. Op. of Miss. Ethics Comm. Op. No. 02-108-E.

A city may contract with an environmental services corporation to perform duties related to the operation of the city's water and wastewater utilities including specific duties the corporation's owner would have as acting public works director. Op. of Miss. Ethics Comm. Op. No. 02-109-E.

A highway patrol officer is not prohibited from setting up and teaching a defensive driving course and charging a fee from the participants for attending the course; however, the officer will be in violation if he: should use the state's equipment, facilities or other resources to conduct the training classes; conducts the classes during time scheduled to perform his state public duties; influences and/or coerces individuals by way of his law enforcement position into taking his or another officer's defensive driving course. Op. of Miss. Ethics Comm. Op. No. 02-110-E.

A recreational authority's executive director, is prohibited from serving a city/county sports officials organization as an officer when his position as the authority's executive director is responsible for oversight of its contract with the organization. Op. of Miss. Ethics Comm. Op. No. 02-111-E.

A city may employ the spouse of an assistant city clerk as a water meter reader. Op. of Miss. Ethics Comm. Op. No. 02-112-E.

The Department of Human Services may not contract with a security company to provide security services to one of its county offices when one of the department's employees is co-owner of the security company. Op. of Miss. Ethics Comm. Op. No. 02-113-E.

A school board may not consider and accept bids for the sale of sixteenth section land timber from a company employing one of the school board members. Op. of Miss. Ethics Comm. Op. No. 02-114-E.

A city board is not barred from authorizing a contract with an insurance company when such authorization occurs after an alderman's and his spouse's full divestiture of their interests in the insurance company; however, the alderman must be advised that he should totally and completely recuse himself from any decision of the city board to contract with the company. Op. of Miss. Ethics Comm. Op. No. 02-115-E.

The mayor of a city is prohibited from receiving a grant contract approved and issued by the mayor and aldermen to rehabilitate the facade of the mayor's building until one year after the mayor leaves office. Op. of Miss. Ethics Comm. Op. No. 02-116-E.

Conflict of interest laws do not prohibit a mayor from reappointing his brother-in-law to serve on a housing authority board. Op. of Miss. Ethics Comm. Op. No. 02-117-E.

It is not as such a violation of the state conflict of interest laws for a state conservation officer to be employed as a patrol officer for a levee board. Op. of Miss. Ethics Comm. Op. No. 02-118-E.

If a county supervisor was a member of the board that authorized the levy of an emergency telephone service charge to fund the E-911 Commission, Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit the supervisor's spouse from remaining employed with the E-911 Commission after their marriage and this prohibition will apply until one year after the supervisor has left office. Op. of Miss. Ethics Comm. Op. No. 02-119-E.

It is not as such a violation of the conflict of interest laws for an attorney whose firm represents a municipality to simultaneously serve as a municipal school board member as the municipality and the school district are separate governmental authorities as defined in Code Section 25-4-103(g)(h). Op. of Miss. Ethics Comm. Op. No. 02-120-E.

A school board is prohibited by Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) from hiring a prospective school board member's law firm and/or an insurance company when the school district's contract with the law firm or the insurance company was authorized by the school board during the prospective school board member's term or within one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-120-E.

A county supervisor may not in any way be involved in the board of supervisors' decision to appoint his stepchild to a community college board of trustees as his involvement would result in a violation of Code Section 25-4-105(1). Op. of Miss. Ethics Comm. Op. No. 02-121-E.

A community college may contract for energy savings services with Company C when that company and Company A, for which a college trustee serves as a member of the board of directors, are both subsidiaries of Company B, because the trustee's interest in Company C's energy savings agreement with the college by way of his directorship with Company A is outside the "edge of the target" necessary for violating Mississippi Constitution Section 4-109 and Code Section 25-4-105(2). Op. of Miss. Ethics Comm. Op. No. 02-122-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) absolutely prohibit first-time home buyers from using grants partially funded by the county to purchase housing from the County Community Development Coalition employing a county supervisor as its executive director during the supervisor's term or within one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-123-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) will prohibit an insurance agency employing a water supply district board member from selling insurance to a sewer authority during the member's term and for one year thereafter. Op. of Miss. Ethics Comm. Op. No. 02-124-E.

A school district may contract with a school teacher's spouse's business to purchase sporting equipment without the school teacher violating Code Section 25-4-105(3)(a) if, in accord with the exception in Code Section 25-4-103(k)(iv), the teacher has no direct or indirect control over the contracts between the district and her spouse's business. Op. of Miss. Ethics Comm. Op. No. 02-125-E.

Conflict of interest laws do not prohibit a planning commission from contracting with a business whose past employee now works as executive director of the planning commission nor do the conflict of interest laws impose a waiting period before such a contract may occur. Op. of Miss. Ethics Comm. Op. No. 02-127-E.

Because the executive director of a nonprofit organization, as a legislator, would be a public servant under Code Section 25-4-103(p)(i), if he had within his job duties as a compensated director of the organization the responsibility to attempt to persuade legislators to pass laws, he would be certain to violate Code Section 25-4-105(3)(d). Op. of Miss. Ethics Comm. Op. No. 02-130-E.

A state legislator serving as the executive director of a nonprofit organization that receives federal funds, state funds or any other funds that are appropriated by the Legislature is prohibited by Mississippi Constitution Section 4-109 and Code Section 25-4-105(2), during his term or for one year thereafter from being interested, directly or indirectly, in any contract authorized by the Legislature of which the legislator is a member or was a member. Op. of Miss. Ethics Comm. Op. No. 02-130-E.

Conflict of interest laws do not prohibit a prosecuting attorney from being employed by the state and a municipality; however the attorney is prohibited by Code Section 25-4-105(1) from using her official position to obtain a pecuniary benefit for herself or a business with which she is associated, and she must avoid involvement with any prosecution of a matter concerning the division of the state also employing her in order to fully comply with the public policy mandate set forth in Code Section 25-4-101. Op. of Miss. Ethics Comm. Op. No. 02-132-E.

City employees participating in a HUD loan program would not violate Code Section 25-4-105(3)(a) by receiving down payment assistance administered by the city; however, to fully and completely comply with the public policy mandate set forth in Code Section 25-4-101, the city and employees should avoid situations related to the program if the employees appear to realize personal gain through official conduct. Op. of Miss. Ethics Comm. Op. No. 02-134-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) absolutely prohibit the mayor or a member of the city council from participating in an HUD-funded down payment assistance program. Op. of Miss. Ethics Comm. Op. No. 02-134-E.

Failure of an aldermen to totally and completely recuse himself from matters pertaining to a re-zoning issue that could affect the value of his property would result in his violating Code Section 25-4-105(1) should he receive a pecuniary benefit through an increase or avoiding a decrease in the value of his property, in addition to his failing to comply with state public policy as mandated in Code Section 25-4-101. Op. of Miss. Ethics Comm. Op. No. 02-135-E.

Conflict of interest laws do not as such prohibit an individual from simultaneously holding the employment positions of county school resource officer, constable and county youth court compliance officer. Op. of Miss. Ethics Comm. Op. No. 02-136-E.

The conflict of interest laws do not prohibit a municipality from purchasing sports uniforms from an alderman's son's business as long as the alderman has no direct or indirect interest in the son's business's contract with the city to sell the uniforms. Op. of Miss. Ethics. Comm. Op. No. 03-001-E.

A school district would not be prohibited from continuing to furnish teachers to a city operated community center employing the newly elected school board member as the assistant director of the city community center. Op. of Miss. Ethics. Comm. Op. No. 03-002-E.

A member of the county board of supervisors would be prohibited from using his official position in approving his father's employment as the county district's road construction manager in a beat system county; to avoid a violation, the supervisor may not, in any way, be involved in the decision to employ his father with the county and, in addition, may not be involved in any decisions concerning pay raises or the increasing of other benefits that would benefit his father's county employment. Op. of Miss. Ethics. Comm. Op. No. 03-003-E.

Conflict of interest laws do not prohibit an individual from holding the employment position of constable while simultaneously being employed as a Department of Transportation law enforcement officer, a president/fire chief of a volunteer fire department, an operator of a water association and a part-time campus police officer for a county school district. Op. of Miss. Ethics. Comm. Op. No. 03-004-E.

Code Section 25-4-105(3)(a) does not prohibit a chancellor, who does not have a primary office provided by the county, from using the per annum provided by the Administrative Office of the Courts under Code Section 9-1-36(8) to pay rent expense on office space owned and provided by the chancellor and used as his primary office; furthermore, Code Section 25-4-105(1), is not applicable as the authorized per annum is considered compensation provided for by law. Op. of Miss. Ethics. Comm. Op. No. 03-006-E.

The Office of State Aid Road Construction is not prohibited by the conflict of interest laws from employing the spouse of the Department of Transportation's chief engineer. Op. of Miss. Ethics. Comm. Op. No. 03-008-E.

It is not a violation of the conflict of interest laws for a city's buildings and grounds director to simultaneously serve as a county supervisor when the employing city is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-009-E.

The employment contract of a legislator's spouse with a planning and development district as a nurse case manager for the Medicaid waiver program does not violate Mississippi Constitution Section 4-109 or Code Section 25-4-105(2). Op. of Miss. Ethics. Comm. Op. No. 03-010-E.

In order to avoid violating conflict of interest laws by contracting with a publishing company to develop material that could be approved as an educational curriculum, a part-time employee of a state university, who performs professional development and implementation of programs work under a contract between the university and the department of education to develop curriculum frameworks for the department of education, must recuse himself, in his university job, from all matters concerning the publishing company. Op. of Miss. Ethics. Comm. Op. No. 03-012-E.

Conflict of interest laws do not prohibit City A's alderman from also serving as the board attorney of City B when City B's alderman is employed by City A because the two municipalities are separate governmental entities as set forth in the definitions in Code Section 25-4-103(g)(ii) and (h). Op. of Miss. Ethics. Comm. Op. No. 03-013-E.

It is not a violation of the conflict of interest laws for a city firefighter to simultaneously serve as a county supervisor, even though the employing city is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-014-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) would prohibit the son of a member of a city council from remaining employed with the city if the council member does, in fact, have an interest, direct or indirect, in the son's employment contract; to avoid using his official position to obtain a pecuniary benefit for his son, the council member must totally and completely recuse himself from subject matters providing a pecuniary benefit to his son. Op. of Miss. Ethics. Comm. Op. No. 03-015-E.

A state employee is prohibited from having a material financial interest in an outsourcing business, as a part owner, if the business enters into a contract to provide services to any agencies, departments or commissions of the state. Op. of Miss. Ethics. Comm. Op. No. 03-016-E.

After purchasing a residential property from the county board of education, a town is prohibited from selling or leasing the property to an alderman who currently resides in the property, as the school's principal. Comm. Op. No. 03-017-E.

After purchasing a residential property from the county board of education, a town is prohibited from leasing the property to the county board of education for use as the residence of the school's principal, who is also the town's alderman. Comm. Op. No. 03-017-E.

It is not a violation of the conflict of interest laws for a school teacher to simultaneously serve as a county supervisor, even though the employing school district is located within the county he will serve. Op. of Miss. Ethics. Comm. Op. No. 03-018-E.

Code Section 25-4-105(1) would absolutely prohibit a county supervisor from participating and voting on the in the issuance of Tax Increment Financing Bonds if a subsidiary corporation employing the supervisor's daughter was developing the area or involved in any other way; the only way the supervisor could avoid a violation would be by totally and completely recusing himself from all discussions, actions and votes of the board of supervisors related to the authorization and issuance of the bonds. Op. of Miss. Ethics. Comm. Op. No. 03-019-E.

Code Section 25-4-105(3)(a) will prohibit a county planning commission member from being employed and compensated by the county sheriff's department as a part-time deputy sheriff. Op. of Miss. Ethics. Comm. Op. No. 03-020-E.

Conflict of interest laws do not prohibit an individual from serving as city judge when the individual's sister or brother serves as an alderman for the same city. Op. of Miss. Ethics. Comm. Op. No. 03-021-E.

Conflict of interest laws will not prohibit a police chief from serving a city, whose cousin also serves the same city as alderman, unless the alderman has a direct or indirect interest in the employment contract. Op. of Miss. Ethics. Comm. Op. No. 03-021-E.

Code Section 25-4-105(3)(a) prohibits a state agency from purchasing parts, supplies or equipment, or leasing equipment, from any businesses in which the agency's commissioner has a material financial interest. Op. of Miss. Ethics. Comm. Op. No. 03-024-E.

A legislator is prohibited by Mississippi Constitution Section 4-109 and Code Section 25-4-105(2)from being employed as legal counsel with a correctional facility when the facility contracts with the Department of Corrections to house, care and control state inmates during the legislator's term or within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 03-025-E.

It is not a violation of the conflict of interest laws for a board of supervisors to appoint an individual to the position of jury commissioner when the individual's spouse serves the county as deputy circuit clerk. Op. of Miss. Ethics. Comm. Op. No. 03-026-E.

It is not a violation of the conflict of interest laws for a board of supervisors to appoint an individual to the position of jury commissioner when the individual's spouse serves the county as deputy circuit clerk. Op. of Miss. Ethics. Comm. Op. No. 03-026-E.

Conflict of interest laws do not prohibit the mother of a state board executive director from assisting a state agency in an investigation, on a pro bono basis, when the mother has a specific medical condition conducive to helping in the conduct of an investigation of possible professional misconduct by individuals regulated by the state agency in question. Op. of Miss. Ethics. Comm. Op. No. 03-027-E.

Conflict of interest laws do not prohibit a municipal court judge from also serving as the county youth court prosecutor when the municipality is located within the county the youth court prosecutor serves. Op. of Miss. Ethics. Comm. Op. No. 03-028-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2 prohibit the spouse of a county hospital board of trustees member from remaining employed with the hospital after the trustee takes office and the board of which he is a member approves a budget authorizing the salary of the spouse. Op. of Miss. Ethics. Comm. Op. No. 03-029-E.

A constable may not purchase sheriff's department surplus vehicle from the county he serves as a constable due to the prohibition set forth in Code Section 25-4-105(3)(b). Op. of Miss. Ethics. Comm. Op. No. 03-030-E.

Code Section 25-4-105(3)(e) does not prohibit a retired state employee from working with a consultant on the retired employee's state agency's projects if the employee was not directly concerned or did not personally participate, while employed by the agency, in any case, decision, proceeding or application related to the consultant's selection for the project or the project itself. Op. of Miss. Ethics. Comm. Op. No. 03-031-E.

A state university instructor, if elected as a member of the Legislature, must resign from her employment position with the university prior to the Legislature's appropriation of funding for the university during her term of office. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

State conflict of interest laws do not prohibit a state university instructor from being a candidate for the Legislature; however, Code Sections 25-4-101 and 25-4-105(1) both prohibit a university instructor from campaigning for elected office during those hours when she is carrying out public duties and being compensated by the state, and from using state equipment, supplies or other resources in any campaign activity. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

The employment of a Legislator's spouse as a university instructor compensated with funds appropriated by the Legislature would not violate Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) due to the Supreme Court's "large class rule"being applicable to the circumstance. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

Conflict of interest laws do not as such prohibit a Legislator's spouse from serving as a county public defender. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

Conflict of interest laws do not as such prohibit a legislative candidate or an elected Legislator from serving on a city planning and zoning commission. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

It is not a violation of the conflict of interest laws for a city planning and zoning commissioner's spouse to receive compensation from the same city related to city misdemeanor cases. Op. of Miss. Ethics. Comm. Op. No. 03-033-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) do not prohibit a state commission from approving payments to an architect for a project associated with a grant approved by the commission prior to the appointment of the architect's spouse to the board of directors of the commission. Op. of Miss. Ethics. Comm. Op. No. 03-035-E.

An individual simultaneously serving a city as an alderman and a county as a coroner is not in a situational violation of the conflict of interest laws; however, Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) would prohibit the alderman from being directly or indirectly paid any fees or other compensation by his city as coroner that would arise from a contract authorized by the board of aldermen during his term on that board and within one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 03-036-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) will not prohibit a Convention and Visitors Bureau board member from simultaneously serving as an officer/director of an economic development organization, even though the organization may receive grant funding from the Bureau and may enter into a service contract with the Bureau. Op. of Miss. Ethics. Comm. Op. No. 03-037-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) will prohibit a Convention and Visitors Bureau board member from simultaneously serving as an officer/director of a non-profit main street organization if the organization receives grant funding from the Bureau during the member's term and one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 03-037-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) will prohibit a Convention and Visitors Bureau board member from simultaneously serving as an officer/director of a nonprofit historic foundation if the foundation receives grant funding from the

Bureau during the member's term and one year thereafter. Op. of Miss. Ethics. Comm. Op. No. 03-037-E.

A Convention and Visitors Bureau may award a grant to a nonprofit historic foundation when a board member of the Bureau is an antebellum home owner who participates in the foundation-sponsored annual pilgrimage but receives no fees related to the pilgrimage. Op. of Miss. Ethics. Comm. Op. No. 03-037-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit a Convention and Visitors Bureau from purchasing brochures from a board member of the Bureau or a business with which he is associated, regardless of the cost savings to the Bureau. Op. of Miss. Ethics. Comm. Op. No. 03-037-E.

Convention and Visitors Bureau may award a grant to a private organization for hotel/motel cost rebates when a board member of the Bureau is an employee of one of the hotel/motels that may be used by the organization's participants without violating Mississippi Constitution Section 4-109 and Code Section 25-4-105(2).Op. of Miss. Ethics. Comm. Op. No. 03-037-E.

A superintendent of education's spouse can remain employed as a non-instructional employee and be re-employed by a school board if the board has established a policy to authorize the board's designee to recommend the spouse as an employee when the spouse was employed by the local school district at the time the superintendent was elected or appointed to office and the employee is not compensated in excess of the statewide average for such a position. Op. of Miss. Ethics. Comm. Op. No. 03-038-E.

Conflict of interest laws do not prohibit an individual from serving as a county constable while simultaneously employed by the Department of Human Services as a child support enforcement officer; however, the individual may not perform the duties and responsibilities of a constable when on duty with the state and being paid by the state or using state resources. Op. of Miss. Ethics. Comm. Op. No. 03-039-E.

A town may contract with the municipal court clerk's spouse's business to maintain the town's cemetery without the clerk violating Code Section 25-4-105(3)(a), where the exception set forth in Code Section 25-4-103(k)(iv) is applicable. Op. of Miss. Ethics. Comm. Op. No. 03-040-E.

It is not a violation of the conflict of interest laws for the county to hire the county tax assessor/collector's spouse as a road foreman. Op. of Miss. Ethics. Comm. Op. No. 03-042-E.

A retired state university employee, who receives retirement payments from the PERS system, may serve in the state Legislature. Op. of Miss. Ethics. Comm. Op. No. 03-043-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit a state legislator's law firm from being paid directly from loan monies from the Water Pollution Control Revolving Loan Fund as the regional utility authority's regular attorney and/or receiving additional benefits and/or compensation as a authority's regular attorney if those additional benefits/compensation arise from or are due to the pollution control project for which the authority received the Revolving Loan Fund monies from the Department of Environmental Quality. Op. of Miss. Ethics. Comm. Op. No. 03-044-E.

A state legislator's law firm is not prohibited from performing litigation and/or attending to matters such as bond issues as long as such actions are not a result of a regional utility authority's loan from the Water Pollution Control Revolving Loan Fund. Op. of Miss. Ethics. Comm. Op. No. 03-044-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit a state legislator's law firm from being paid attorney fees out of loan funds received from the Water Pollution Control Revolving Loan Fund administered by the Department of Environmental Quality where the firm has a direct interest in the loan agreement contract authorized by the laws passed by the Legislature of which the legislator was a member. Op. of Miss. Ethics. Comm. Op. No. 03-044-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) will not prohibit a state legislator and/or his law firm from continuing to serve as the attorney(ies) for a county board of supervisors, as authorized in Code Section 19-3-47, should the regional utility authority repay county loans from the Water Pollution Control Revolving Loan Funds loan. Op. of Miss. Ethics. Comm. Op. No. 03-044-E.

Where an employee of a planning and development district married executive director's daughter, as the son-in-law's supervisor and the district's executive director, the director may not transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline the son-in-law as a district employee. Op. of Miss. Ethics. Comm. Op. No. 03-045-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit the child of a member of the city council from remaining employed with the city as a member of the police department if the child is not completely financially independent and the member, in fact, has an interest, direct or indirect, in the child's employment contract. Op. of Miss. Ethics. Comm. Op. No. 03-046-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit a town from selling or leasing property to an alderman who resides in the property as a school principal, after the town purchases the property from the school district. Op. of Miss. Ethics. Comm. Op. No. 03-048-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) prohibit the sale by a town of property purchased from a school district to a third party who intends to allow an alderman, who resides in the property as a school principal, to continue using the property for his residence. Op. of Miss. Ethics. Comm. Op. No. 03-048-E.

An alderman is prohibited from purchasing or leasing property purchased by a town from a school district for a period of one year after he leaves office. Op. of Miss. Ethics. Comm. Op. No. 03-048-E.

Mississippi Constitution Section 4-109 and Code Section 25-4-105(2) would prohibit a Mayor-Council municipality from contracting with a business employing the mayor's son if the mayor was directly or indirectly interested in the contract. Op. of Miss. Ethics. Comm. Op. No. 03-049-E.

OPINIONS OF THE ATTORNEY GENERAL

Based on a recent opinion from the Mississippi Ethics Commission a constable may not be employed by the sheriff's department without violating Section 25-4-105(3)(a). 1996 Miss. Op. Att'y Gen. 5.

Nepotism statute prohibiting a board of alderman from appointing a person who is related by blood or marriage within the third degree to a board member to one of five specific positions, that is, officer, clerk, stenographer, deputy or assistant, applies by its own terms to five positions only and, therefore, does not preclude the mayor and aldermen from appointing the mayor's brother as an operator/laborer in the water department. 1998 Miss. Op. Att'y Gen. 833.

A legislator will be prohibited by Article 4, § 109 of the Mississippi Constitution and § 25-4-105 from contracting with a Head Start agency receiving funding through the legislative appropriation process even if the funding is indirect. 1998 Miss. Op. Att'y Gen. 551.

State law contrary to 42 U.S.C.S. § 1437 is preempted, and a tenant may serve on a board of commissioners of a public housing authority/regional public housing authority until a court of competent jurisdiction rules otherwise. Johnson, 2000 Miss. Op. Att'y Gen. 265.

The prohibitions imposed by Constitutional Section 109 and Code Section 25-4-105(2) are eliminated if the school board and school superintendent follow the procedure stated in Code Section 37-7-333 when selecting a depository; however, the constitutional prohibitions are eliminated only with regard to the selection of a depository, and there would still be a conflict for other purposes, such as selecting and opening accounts in various banks, approval of securities pledged, and transfer and deposit of funds between depositories, etc. 2000 Miss. Op. Att'y Gen. 324.

A member of the state legislature may simultaneously serve as an elected municipal alderman, as both positions are squarely within the legislative branch of government. 2002 Miss. Op. Att'y Gen. 134.

There is no conflict between § 25-1-53 and this section. The prohibitions contained therein are cumulative and individuals must comply with both statutes. 2004 Miss. Op. Att'y Gen. 71.

RESEARCH REFERENCES

Law Reviews.

1987 Mississippi Supreme Court Review, Professional responsibility. 57 Miss. L. J. 433, August, 1987.

§ 25-4-107. Complaints; where brought; removal; initiated by; defendant's right to jury trial.

(1) The commission may pursue enforcement of this chapter by means of hearings held before the commission or an independent hearing officer to determine whether a respondent violated the law and, if so, what penalty should be imposed. Hearings shall be conducted according to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence.

(2) Any person aggrieved by a decision of the commission made pursuant to its hearing procedures may appeal de novo to the Circuit Court for Hinds

County, and execution of the commission's decision shall be stayed upon the filing of a notice of appeal.

HISTORY:

Laws, 1983, ch. 469, § 4; Laws, 2008, ch. 562, § 14, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 14.

Cross References —

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

Application of penalty provisions of this section to elected or appointed officials who derive pecuniary benefit as result of duties under Mississippi Gaming Control Act, see § 75-76-281.

JUDICIAL DECISIONS

1. In general.

The jury trial provision of § 25-4-107 does not alter or amend the summary judgment procedure under Miss. R. Civ. P. 56; the conflicts of interest statute provides for civil remedies and penalties, and the provision for trial by jury means no more than it means in any other civil process before the circuit court. Towner v. Moore, 604 So. 2d 1093, 1992 Miss. LEXIS 424 (Miss. 1992).

ETHICS OPINIONS

1. In general.

All complaints for a violation of Article 3 of the Mississippi Ethics in Government Act must be brought in the circuit court, and such complaints may be initiated only by the Mississippi Ethics Commission or the district attorney. Op. of Miss. Ethics Comm. Op. No. 99-064-E.

§ 25-4-109. Penalties; elected and nonelected public servants.

(1) Upon a finding by clear and convincing evidence that any elected public servant or other person has violated any provision of this article, the commission may censure the elected public servant or impose a civil fine of not more than Ten Thousand Dollars ($10,000.00), or both. The commission may further recommend to the Circuit Court for Hinds County that the elected public servant be removed from office.

(2) Upon a finding by clear and convincing evidence that any nonelected public servant has violated any provision of this article, the commission may censure the nonelected public servant or impose a civil fine of not more than Ten Thousand Dollars ($10,000.00), or both. The commission may further recommend to the Circuit Court for Hinds County that the nonelected public servant be removed from office, suspended, or subjected to a demotion or reduction in pay.

(3) The commission may order restitution or other equitable or legal remedies to recover public funds or property unlawfully taken, as well as unjust enrichment, although not public funds. Any pecuniary benefit received by a public servant in violation of this article may be declared forfeited by the commission for the benefit of the governmental entity injured.

(4) In the event a public servant does not appeal the decision or recommendation of the commission, the commission may petition the Circuit Court for Hinds County for the removal, suspension, demotion or reduction of pay of the public servant as provided by law.

HISTORY:

Laws, 1983, ch. 469, § 5; Laws, 2008, ch. 562, § 15, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 15.

Cross References —

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibited and authorized activities of public servants, see § 25-4-105.

Imposition of conditions described in subsection (2) of this section against public servant by authority head, see § 25-4-111.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

JUDICIAL DECISIONS

1. In general.

Claims made under §§ 25-4-109 and 25-4-113 were properly joined in one action, even though the statutes require different evidentiary standards, where the several claims asked jointly for relief, arose out of the same transaction or occurrence, and presented common questions of law and fact. Towner v. Moore, 604 So. 2d 1093, 1992 Miss. LEXIS 424 (Miss. 1992).

ETHICS OPINIONS

A town could proceed with a grant for funding the construction of rental units to be built on property of the spouse of a newly elected board member where the application and approval of the grant occurred prior to the newly elected board member taking office as no further actions on the part of the town's board of aldermen was required in the grant process other than the board's approval of the payment draws, which was part of the terms of the grant application and grant contract approved by the previous board of aldermen. Op. of Miss. Ethics. Comm. Op. No. 01-109-E.

§ 25-4-111. Authority head to take action against public servant who has violated article; conditions imposed upon former public servant.

(1) An authority head and any other public servant having the authority to appoint a person to a position of public service, regardless of whether or not such appointment requires the approval of the senate or any other body, employee or person, shall take such action as may be ordered by a circuit court of competent jurisdiction with respect to any public employee within his authority or any such appointee upon a finding by such court that such employee or appointee has violated any provision of this article. Such action may include the imposition of the conditions described in subsection (2) of Section 25-4-109.

(2) Upon a finding by a circuit court of competent jurisdiction that a former public servant or other person has violated any provision of this article

or any order promulgated hereunder, such court shall bar or impose reasonable conditions upon:

(a) The appearance before any authority of such former public servant or other person.

(b) The conduct of, or negotiation or competition for, business with any authority by such former public servant or other person for such period of time as may be necessary or appropriate to effectuate the purposes of this article.

HISTORY:
Laws, 1983, ch. 469, § 6, eff from and after July 1, 1983.

Cross References —
Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibited and authorized activities of public servants, see § 25-4-105.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

§ 25-4-113. Civil action for damages against violator of article; forfeiture of pecuniary benefit; costs and attorneys' fees.

The Attorney General of the State of Mississippi, the commission, or any governmental entity directly injured by a violation of this article may bring a separate civil action against the public servant or other person or business violating the provisions of this article for recovery of damages suffered as a result of such violation. Further, any pecuniary benefit received by or given by a public servant in violation of this article shall be declared forfeited by a circuit court of competent jurisdiction for the benefit of the governmental entity injured. In the discretion of the court, any judgment for damages or forfeiture of pecuniary benefit may include costs of court and reasonable attorney's fees.

HISTORY:
Laws, 1983, ch. 469, § 7; Laws, 2008, ch. 562, § 16, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. The words "violation of this act" in the first sentence were changed to "violation of this article." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Notes —
On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 16.

Cross References —
Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction with other sections.

1. In general.

Claims made under §§ 25-4-109 and 25-4-113 were properly joined in one action, even though the statutes require different evidentiary standards, where the several claims asked jointly for relief, arose out of the same transaction or occurrence, and presented common questions of law and fact. Towner v. Moore, 604 So. 2d 1093, 1992 Miss. LEXIS 424 (Miss. 1992).

2. Construction with other sections.

Where a person objects to unethical conduct by that body, that person is only entitled to file a charge with the Mississippi Ethics Commission for investigation and subsequent action in the courts. The Commission should then investigate the individual's allegations, and upon finding probable cause for believing that a violation has occurred, the Commission is statutorily commanded to refer all complaints and evidence gathered during its investigation to the Attorney General and the local district attorney having jurisdiction for prosecution. City of Jackson v. Greene, 869 So. 2d 1020, 2004 Miss. LEXIS 337 (Miss. 2004).

RESEARCH REFERENCES

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 25-4-115. Civil liability not precluded.

This article shall not bar, suspend or otherwise restrict any right or liability to damage, penalty, forfeiture, restitution or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constituted an offense covered by this article.

HISTORY:

Laws, 1983, ch. 469, § 8, eff from and after July 1, 1983.

Cross References —

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

§ 25-4-117. Criminal liability not precluded.

The provisions of this article shall be in addition to any criminal laws. Actions taken under the provisions of this article shall not bar prosecution for violations of the criminal law.

HISTORY:

Laws, 1983, ch. 469, § 9, eff from and after July 1, 1983.

Cross References —

Authority of the ethics commission to issue advisory opinions with regard to any standard of conduct set forth in this section, see § 25-4-17.

Prohibition against public official deriving income from issuance of bonds under Mississippi Major Economic Impact Act, see § 57-75-25.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Ethics Commission having opined that certain employment of a mayor would be prohibited by the ethics laws, he would not be immune to possible criminal prosecution if he elected to engage in such employment. 2002 Miss. Op. Att'y Gen. 272.

§ 25-4-119. Officials not to derive pecuniary benefits as result of official duties; penalties.

No elected or appointed official shall derive any pecuniary benefit, directly or indirectly, as a result of such elected or appointed official's duties under Sections 21-19-33, 27-109-1, 27-109-3, 27-109-7, 27-109-9, 67-1-71, 87-1-5, 95-3-25, 97-33-1, 97-33-7, 97-33-9, 97-33-17, 97-33-25, and 97-33-27. Any person convicted of a violation of this section shall be punished pursuant to the provisions of this article.

HISTORY:

Laws, 1990, ch. 573, § 15, eff from and after April 1, 1990.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in this section was corrected by substituting "...this article..." for "Article 3, Chapter 4, title 25, Mississippi Code of 1972."

§ 25-4-121. Officials or members of immediate family, partners or associates not to derive pecuniary benefits as result of official duties under Chapter 497, Laws of 2009; penalties.

No elected or appointed official shall derive any pecuniary benefit, directly or indirectly, as a result of his duties under Chapter 497, Laws of 2009. Any elected or appointed official, any member of the immediate family or any partner or associate of the elected or appointed official, shall not derive any income from the issuance of any bonds or the disposition of any property under Chapter 497, Laws of 2009, contrary to the provisions of Section 109, Mississippi Constitution of 1890, or this article. The provisions of this section shall not apply to any person performing clerical or administrative functions, which are other than legal services provided by an attorney, that are associated with the issuance of any bonds under Chapter 497, Laws of 2009, such as the printing of bonds or other materials. Any person convicted of a violation of this subsection shall be punished by imprisonment for not less than one (1) year and not more than five (5) years and a fine of not less than Two Thousand Five Hundred Dollars ($2,500.00) and not more than Ten Thousand Dollars ($10,000.00).

HISTORY:

Laws, 2009, ch. 497, § 8, eff from and after July 1, 2009.

Editor's Notes —

Laws of 2009, ch. 497, which enacted this section, amended §§ 57-43-1, 57-43-15 and 57-45-1. Additional provisions of Laws of 2009, ch. 497 are noted under those same sections and under § 65-1-703.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in this section was corrected by substituting "...this article..." for "Article 3, Chapter 4, title 25, Mississippi Code of 1972."

CHAPTER 5.

REMOVALS FROM OFFICE

Sec.
25-5-1. Removals from office.
25-5-3. Governor empowered to remove elective county officials.
25-5-5. Causes for removal.
25-5-7. Demand for removal.
25-5-9. Form of petition.
25-5-11. Signing of petition.
25-5-13. Verification of petition.
25-5-15. Certification of county registrar.
25-5-17. Contested status of signator determined by Governor.
25-5-19. Examination of petition by election commissioners.
25-5-21. Notice of hearing.
25-5-23. Removal council.
25-5-25. Judgment of council.
25-5-27. Resignation of officer.
25-5-29. Conduct of election.
25-5-31. Form of the ballot.
25-5-33. Results of election.
25-5-35. Appeals.
25-5-37. Penalties.

§ 25-5-1. Removals from office.

If any public officer, state, district, county or municipal, shall be convicted or enter a plea of guilty or nolo contendere in any court of this state or any other state or in any federal court of any felony other than manslaughter or any violation of the United States Internal Revenue Code, of corruption in office or peculation therein, or of gambling or dealing in futures with money coming to his hands by virtue of his office, any court of this state, in addition to such other punishment as may be prescribed, shall adjudge the defendant removed from office; and the office of the defendant shall thereby become vacant. If any such officer be found by inquest to be of unsound mind during the term for which he was elected or appointed, or shall be removed from office by the judgment of a court of competent jurisdiction or otherwise lawfully, his office shall thereby be vacated; and in any such case the vacancy shall be filled as provided by law.

When any such officer is found guilty of a crime which is a felony under the laws of this state or which is punishable by imprisonment for one (1) year or more, other than manslaughter or any violation of the United States Internal Revenue Code, in a federal court or a court of competent jurisdiction of any other state, the Attorney General of the State of Mississippi shall promptly enter a motion for removal from office in the Circuit Court of Hinds County in the case of a state officer, and in the circuit court of the county of residence in the case of a district, county or municipal officer. The court, or the judge in vacation, shall, upon notice and a proper hearing, issue an order removing such person from office and the vacancy shall be filled as provided by law.

HISTORY:

Codes, Hutchinson's 1848, ch. 18, art 5 (3); 1857, ch. 4, art 24, ch. 6, art 198; 1871, §§ 321, 392; 1880, §§ 152, 417; 1892, § 3069; 1906, § 3477; Hemingway's 1917, § 2815; 1930, § 2907; 1942, § 4053; Laws, 1979, ch. 508, § 17; Laws, 2008, ch. 458, § 1, eff from and after July 1, 2008.

Cross References —

Power of Governor to suspend state and county officers in default, see Miss. Const. Art. 5, § 125.

Authority of Legislature to empower Governor to remove and appoint county and municipal officers, see Miss. Const. Art. 5, § 139.

Jurisdiction of chancery court over suits on bonds of public officers for failure to account for money or property received, see Miss. Const. Art. 6, § 161.

Criminal liability of public officers for wilful neglect of duty or misdemeanor in office, see Miss. Const. Art. 6, § 175.

Definition of "felony", see § 1-3-11.

Definition of "infamous crime", see § 1-3-19.

General supervisory powers of Governor over official conduct of state officers, see § 7-1-5.

Annulment of appointment to office upon refusal of senate consent, see § 7-1-35.

Appointment of pro tempore clerk of court, sheriff, or coroner, see § 9-1-27.

Authority of judge or chancellor to remove court reporter from office, see § 9-13-11.

Quo warranto to test right to public office, see § 11-39-1.

Vacancy upon failure of person elected or appointed to office to qualify, see § 25-1-7.

Vacancy by removal or default of officer, see § 25-1-59.

Removal from public office pursuant to this section as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Power of governor to remove elective county officials, see § 25-5-3.

Procedure for removal of elective county officer, see §§ 25-5-7 et seq.

Convening of removal council to consider removal petition, see § 25-5-23.

Removal of executive director of Boards of Tax Appeals, see § 27-4-5.

Removal of Attorney General or district attorney for advising or defending criminals, see § 97-11-3.

Removal of officer for drunkenness, see § 97-11-23.

Removal of peace officer for failure to return offenders, see § 97-11-35.

Vacation of commission of public officer for gambling or wagering with public money, see § 97-33-3.

JUDICIAL DECISIONS

1. In general.

When the Attorney General sought an alderman's removal based on a prior conviction, sufficient evidence showed the conviction because the alderman could not withdraw an admission to the conviction on the grounds statements of counsel were not evidence, as the alderman made the same statements as a witness. Rogers v. State (In re Removal of Rogers), 177 So. 3d 193, 2014 Miss. App. LEXIS 660 (Miss. Ct. App. 2014), cert. denied, 2015 Miss. LEXIS 550 (Miss. 2015), cert. denied, 2015 Miss. LEXIS 549 (Miss. 2015), cert. denied, 178 So. 3d 333, 2015 Miss. LEXIS 548 (Miss. 2015).

Although a member of a county board of supervisors who was convicted of embezzlement was removed from office pursuant to § 25-5-1 without being given the opportunity for a hearing, the failure to abide by the statutory requirements was harmless error since the statute mandates the removal of officers found guilty of felonies, and therefore the board member would have been removed from office regardless of what would have occurred at a hearing. Gerrard v. State, 619 So. 2d 212, 1993 Miss. LEXIS 220 (Miss. 1993).

Petitioner, having been removed from the office of supervisor of a county district upon his conviction of fraud in public office, lacked standing to interfere with a special election to fill the vacancy. Furthermore, petitioner forfeited all of his rights to the public office, regardless of what might transpire on appeal, and his right to such office for the remainder of the term to which he was elected was extinguished by reason of his conviction. Cumbest v. Commissioners of Election, 416 So. 2d 683, 1982 Miss. LEXIS 2053 (Miss. 1982).

In view of the mandatory terms of the Constitution and of Code 1942, § 4053 a court will not stay a removal from office pending appeal, where the officeholder has been convicted of a felony. Jolliff v. State, 210 So. 2d 47, 1968 Miss. LEXIS 1492 (Miss. 1968), overruled, Cumbest v. Commissioners of Election, 416 So. 2d 683, 1982 Miss. LEXIS 2053 (Miss. 1982).

Where the mayor of a town was convicted of attempted embezzlement and the judgment of the trial court ordered his removal from office and declared the office vacant, the judgment of removal and vacancy was not stayed by the defendant taking an appeal with supersedeas.

Bucklew v. State, 192 So. 2d 275, 1966 Miss. LEXIS 1243 (Miss. 1966).

The mere fact that a person who has been convicted may, by means of an appeal, ultimately succeed in establishing his innocence does not necessarily entitle him in the meantime to hold public office. Bucklew v. State, 192 So. 2d 275, 1966 Miss. LEXIS 1243 (Miss. 1966).

This section is self-executing. Bucklew v. State, 192 So. 2d 275, 1966 Miss. LEXIS 1243 (Miss. 1966).

Under statutes respecting removal, officer cannot be removed without previous conviction of crime, if any, which the doing of the prohibited act constitutes. State v. Henderson, 166 Miss. 530, 146 So. 456, 1933 Miss. LEXIS 347 (Miss. 1933).

City marshal elected by the people is a "public officer" within Const. 1890, § 175. Lizano v. Pass Christian, 96 Miss. 640, 50 So. 981, 1910 Miss. LEXIS 153 (Miss. 1910).

Justice of peace cannot remove sheriff from office as directed by this section, and the circuit court, on appeal from such conviction, cannot impose such a sentence. Moore v. State, 45 So. 866 (Miss. 1908).

The court is without power to remove or suspend the clerk from office, except upon conviction as provided in this section. Ex parte Lehman, 60 Miss. 967, 1883 Miss. LEXIS 49 (Miss. 1883).

OPINIONS OF THE ATTORNEY GENERAL

Justice Court judge removed from office for violations of ethical rules is disqualified from being paid medical insurance or salary, until court of competent jurisdiction rules otherwise. 1992 Miss. Op. Att'y Gen. 760.

Trustee of city-county library system is public officer. Once appointed, trustee of city-county library serves for term of five years and can only be removed pursuant to specific statutory provision. 1993 Miss. Op. Att'y Gen. 735.

The separation of powers doctrine, Miss. Const. of 1890, Art. 1, § 2, does not prohibit a city firefighter from serving simultaneously as a county supervisor. Although the two positions are within separate branches of the county government, a firefighter does not exercise substantial policy-making power at the core of the executive branch so there is no conflict. Inquiries concerning potential ethics issues should be referred to the Ethics Commission. 2007 Miss. Op. Att'y Gen. 94, 2007 Miss. AG LEXIS 85.

RESEARCH REFERENCES

ALR.

Injunction as remedy against removal of public officer. 34 A.L.R.2d 554.

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 71 A.L.R.2d 593.

Removal of public officer for misconduct during previous term. 42 A.L.R.3d 691.

Refusal to submit to polygraph examination as ground for discharge or suspension of public employees or officers. 15 A.L.R.4th 1207.

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 10 A.L.R.5th 139.

Constitutionality of state and local recall provisions. 13 A.L.R.6th 661.

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 214 et seq.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.

67 C.J.S., Officers §§ 148, 149, 175, 220.

Lawyers' Edition.

Public employee's right of free speech under Federal Constitution's First Amendment – Supreme Court cases. 97 L. Ed. 2d 903.

Law Reviews.

1982 Mississippi Supreme Court Review: Criminal Law and Procedure: No Right to Hold Public Office After Conviction. 53 Miss. L. J. 155, March 1983.

§ 25-5-3. Governor empowered to remove elective county officials.

The Governor is hereby empowered, in accordance with the provisions of Section 139 of the Mississippi Constitution of 1890, through the procedure and under the regulations prescribed in Sections 25-5-3 through 25-5-37 and for the reasons and causes set forth, to remove any elective county officer in this state; and every elective officer of any county in this state may be removed from office by the Governor at any time when done in compliance with the regulations hereinafter set forth.

HISTORY:

Codes, 1942, § 4054-01; Laws, 1956, ch. 188, § 1, eff from and after passage (approved January 20, 1956).

Cross References —

Vacancy created by removal or default of public officer, see § 25-1-59.

Power of courts to remove public officer convicted of misconduct in office, see § 25-5-1.

JUDICIAL DECISIONS

1. In general.

The statutory scheme for the removal of county officers by the Governor does not violate the separation of powers doctrine. In re Higginbotham, 716 So. 2d 631, 1998 Miss. LEXIS 307 (Miss. 1998).

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 216- 220.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.

67 C.J.S., Officers §§ 148, 149, 175, 220.

§ 25-5-5. Causes for removal.

The reasons or causes for removal from office shall be:

Knowingly or wilfully failing, neglecting, or refusing to perform any of the duties required of such officer by law.

HISTORY:

Codes, 1942, § 4054-01; Laws, 1956, ch. 188, § 1, eff from and after passage (approved January 20, 1956).

Cross References —

Vacancy created by removal or default of officer, see § 25-1-59.

Power of courts to remove public officer for misconduct in office, see § 25-5-1.

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 225 et seq.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.

67 C.J.S., Officers §§ 148, 149, 175, 220.

Lawyers' Edition.

Public employee's right of free speech under Federal Constitution's First Amendment – Supreme Court cases. 97 L. Ed. 2d 903.

§ 25-5-7. Demand for removal.

Before the Governor shall consider the removal from a county office of any elective county officer, there shall be first filed with him a petition signed by not less than thirty percent (30%) of the qualified electors of said county demanding the removal of said officer. Such petition shall contain a general statement, in not more than two hundred (200) words, of the ground or grounds on which such removal is demanded, which statement shall be for the information of the officer involved, for the information of the council hereinafter provided, and for the information of the qualified electors of the county.

All removal petitions with reference to only supervisors, justice court judges and constables must be signed by at least fifty-one percent (51%) of the qualified electors of the beat or district from which they were originally elected.

Upon the request of any qualified elector, it shall be the duty of the county and district prosecuting attorney to advise such person as to the provisions of Sections 25-5-3 through 25-5-37 and how to comply with the same.

HISTORY:

Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2; Laws, 1981, ch. 471, § 46, eff from and after January 1, 1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-1(3) [see Editor's Note below].

Editor's Notes —

Laws of 1981, ch. 471, § 60, provides as follows:

"SECTION 60. Section 8 of this act shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Sections 4, 48 and 59 of this act shall take effect and be in force from and after passage. Sections 17 and 22 of this act shall take effect and be in force from and after March 31, 1982. Sections 15, 16 and 58 of this act shall take effect and be in force from and after July 1, 1983. Sections 20, 23, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41, 42, 46, 47, 49, 50, 51, 52, 54, 55, 56 and 57 of this act shall take effect from and after January 1, 1984, or with respect to a given county, from and after such earlier date as such county elects to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 7 of this act. Sections 9, 10, 18, 19 and 43 of this act shall take effect and be in force from and after January 1, 1984." (Amended, Laws, 1982, ch. 423, § 28, effective from and after March 31, 1982).

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the Sources information was corrected by substituting "eff from and after January 1, 1984, or…from and after such earlier date…pursuant to § 9-11-1(3)" for "eff from and after January 1, 1984, or…from and after such earlier date…pursuant to § 9-11-27(3)."

Cross References —

Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

Power of Governor to remove elective county officials, see § 25-5-3.

Penalties regarding false execution or interference with removal petition, see § 25-5-37.

JUDICIAL DECISIONS

1. In general.

Court in a mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 250 et seq.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.

67 C.J.S., Officers §§ 263 et seq.

§ 25-5-9. Form of petition.

The removal petition shall be in substantially the following form:

REMOVAL PETITION

(WARNING.–It is a misdemeanor, punishable by fine and imprisonment, for any person to sign any removal petition with any name other than his own, or knowingly to sign his name more than once to such petition, or knowingly to sign such petition when he is not a qualified elector.)

Date: ________

TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

We, the undersigned qualified electors of ________ County, State of Mississippi, respectfully demand that ________, holding the office of ________ in said county, be removed from office by the governor for the following reasons, to wit: (Setting out the reasons for removal in not more than two hundred words); that a special election, after lawful notice, be called to permit the qualified electors of said county to vote on the question of whether or not the said officer shall be removed;

That we each for himself say that: I am a qualified elector of said county, and my voting precinct is correctly written after my name, and that it was stated to me prior to the signing of said petition that after signing the same I would not be permitted to remove my name from said petition.

NAME	VOTING PRECINCT
1. ________________	________________
2. ________________	________________
3. ________________	________________

HISTORY:

Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2, eff from and after passage (approved January 20, 1956).

Cross References —

Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.

Court in a mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.
63 Am. Jur. 2d, Public Officers and Employees §§ 256 et seq.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 263 et seq.

§ 25-5-11. Signing of petition.

Such petitions may be circulated and signed in sections; that is, there may be more than one copy of the petition circulated, provided they contain identical language. All petitions, all copies thereof, and all sheets for signature shall be dated as of the day of the first signature to said petition or any section thereof, shall be printed on good quality bond paper on pages 81/2 inches in width by 13 inches in length with a margin of not less than two inches at the top for binding, and the signature sheets shall have numbered lines printed thereon for consecutive signatures. No signature affixed to such petition can thereafter be withdrawn, and there shall be printed at the bottom of each page of the petition and all copies thereof, including pages for signatures only, in twelve point type, the following warning: "No signature affixed to this petition may thereafter be withdrawn." The death of any signator before final certification of the petition shall cancel his signature. No petition may be considered unless filed with the clerk of the election commissioner, as the case may be, within sixty days of the date of the first signature thereon as hereinbefore defined.

HISTORY:
Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2, eff from and after passage (approved January 20, 1956).

Cross References —
Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.
Court in a mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 250 et seq.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 263 et seq.

§ 25-5-13. Verification of petition.

Each and every petition, or separately circulated section thereof, containing signatures shall be verified on the last page thereof in substantially the following form:

STATE OF MISSISSIPPI
County of ________

I, ________, a qualified elector of said county do now state under oath that every person who signed the foregoing petition signed his or her name thereto in my presence, and that before the signing of said petition the signator was told that after signing the same his or her name could not be removed from said petition; that I believe that each has stated his or her name and precinct correctly, and that so far as I know each signer is a qualified elector of this county, and I further certify that the date appearing on the foregoing petition is the correct date on which the first signature was affixed to said petition or any section thereof.

(Signature) ________________

Sworn to and subscribed before me, this ________ day of ________, 20____.

____

____

HISTORY:
Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2, eff from and after passage (approved January 20, 1956).

Cross References —
Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.
Court in a mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-15. Certification of county registrar.

Before the submission of the petitions to the governor to be filed by him, all sections of the same shall be consolidated and delivered to the county registrar of the county in which the petition has been circulated. No signatures shall be thereafter added. The county registrar shall compare the signatures of the persons appearing on said petition with the names of the qualified electors appearing on the poll books of said county, and shall attach to said petition, or to each section of the petition if the same has been circulated in sections, the following certificate:

STATE OF MISSISSIPPI
County of ________

I, ________, county registrar in and for the county and state aforesaid, do hereby certify that I have compared the signatures on the preceding sheets of the removal petition attached hereto, and to the best of my knowledge and belief the said petition (or section of petition) contains the signatures of ________ qualified electors of said county (or beat, as case may be), and I have drawn a line in red ink through the names of those signators who appear by the records in my office not to be qualified electors, or who have died. I further certify that as of the date of the petitions there were ________ qualified electors in this county (or beat, as the case may be).

Given under my hand and seal of office, this the ________ day of ________, 20____.

____
County Registrar

HISTORY:

Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2, eff from and after passage (approved January 20, 1956).

Cross References —

Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.

Court in mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

It is duty of circuit clerk as country registrar to count signatures and verify number submitted and Governor's office will determine validity of petition to remove member of county board of supervisors, which will be determined in accordance with Sections 25-5-17 through 25-5-21. 1993 Miss. Op. Att'y Gen. 567.

RESEARCH REFERENCES

Am. Jur.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-17. Contested status of signator determined by Governor.

Such certificate by the county registrar shall be prima facie evidence of the facts stated therein and of the qualification of the electors whose signatures are thus certified. The Governor shall consider and count only those signatures on such petition as shall be so certified by the registrar; provided, however, that any officer sought to be removed or any citizen of the county shall have the privilege of submitting evidence in writing, under oath, to the Governor as to the question of whether or not any signator to the petition was in fact a qualified elector at the time of the signing of the petition, or has since died. The decision of the governor as to whether or not any particular person was or was not a qualified elector at the time of the signing of the petition, or whether or not any particular person has since died, shall be final and shall not be subject to review. The status of the signator as to whether or not he or she was a qualified elector at the time of signing the petition shall be determined as of the date of the petition and not by any other date.

HISTORY:

Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2, eff from and after passage (approved January 20, 1956).

Cross References —

Signing requirements for petition to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.

Court in a mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-19. Examination of petition by election commissioners.

The county registrar shall not retain in his possession any such petition or any section thereof for a longer period than two (2) days for the first two hundred (200) signatures thereon and one (1) additional day for each two hundred (200) additional signatures or fraction thereof, and the time consumed in the examination of such petitions shall not be counted in determining the time between the signing and the filing of the petitions. At the expiration of the examination, the registrar shall forthwith file the same with the governor, with his certificate attached, and shall obtain a written receipt for the same. The forms herein are not mandatory, but directory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and technical errors. If the registrar be unable to examine the petition, he shall so certify the fact to the county election commissioners, who shall in the same manner and time perform all the functions herein required of the registrar. In the event the county registrar is the officer whose removal is sought by said petition, then said petition shall be delivered to one (1) of the county election commissioners of the county in which the petition has been circulated, and the county election commissioners of such county shall in the same manner and within the same time perform all functions herein required of the registrar. A fee of Five Cents (5¢) per signature shall be allowed for the aforesaid examination of said petitions, to be paid out of the general funds of the county upon due proof of said examination. Any registrar or any board of county election commissioners or member thereof who wilfully fails or refuses to perform the duty or duties herein required of him or them shall be subject to a civil penalty of One Thousand Dollars ($1,000.00), to be recovered in the chancery court of the county by suit which may be filed by any qualified elector who signed said petition or any section thereof.

HISTORY:

Codes, 1942, § 4054-02; Laws, 1956, ch. 188, § 2, eff from and after passage (approved January 20, 1956).

Cross References —

Signing requirements for petition to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.

Court in a mandamus proceeding to require calling of a removal election, may not go back of Governor's finding that 30% of voters signed removal petition. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-21. Notice of hearing.

When said petitions shall have been filed with the Governor, within ten (10) days of the filing thereof the Governor shall cause true copies thereof (photostatic copies being sufficient) to be personally delivered by some officer of the county, designated in writing by the Governor, to the officer sought to be removed, and shall in like manner and form cause to be personally served on said officer a notice to appear, if he desires, at a time to be fixed by the Governor to show cause, if any he can, why the question of his removal should not be submitted to a vote of the qualified electors as hereinafter provided, which said notice shall be served upon said officer at least twenty (20) days prior to the date when his appearance is required. The place of hearing shall be the county courthouse of the county in which the officer resides.

HISTORY:

Codes, 1942, § 4054-03; Laws, 1956, ch. 188, § 3, eff from and after passage (approved January 20, 1956).

Cross References —

Signing requirements for petition to governing body of state or subdivision, see § 1-3-75.

JUDICIAL DECISIONS

1. In general.

Board of supervisors, upon filing of judgment finding substantial basis for a removal election, may not inquire whether removal petition was signed by requisite number of voters, or whether the removal council's findings are valid. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

A judgment of the removal council is not void because final decision was reached and judgment signed at a place other than the place of hearing, where it shows the hearing was at the place designated by law. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Public Officers and Employees §§ 252- 256.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 263 et seq.

§ 25-5-23. Removal council.

At the time and place designated in said notice, the Governor shall cause to be convened a removal council to be composed of three chancery judges appointed by the Governor, none of whom shall reside in the district in which the officer under question resides, to hear and determine whether there is substantial basis for a removal election consistently with the provisions of Sections 25-5-3 through 25-5-37. The senior chancellor shall serve as the presiding judge of the council. The hearing herein provided may continue from day to day and be recessed from time to time, as in the discretion of the council may be ordered. The qualified electors of the county shall likewise be given notice by proclamation of the Governor of the time and place of such hearing. Any interested citizen or citizens may likewise appear at said time and place and make such representations to the council as, in the discretion of the council, may be material to the issues involved. The council shall promulgate rules for such hearings, which shall be in writing, but all representations shall be made under oath, to be administered by some member of the council. It shall not be necessary that a stenographic record be kept of such representations, either for or against removal, but the testimony taken shall be heard as nearly as practicable in compliance with the usually applicable rules of evidence. All decisions of the council on any question, preliminary or final, including the question of whether just cause for an election has been shown, shall be final and not subject to review.

The elective officer concerned shall be entitled to be represented by counsel of his choice at said hearing.

HISTORY:
Codes, 1942, § 4054-03; Laws, 1956, ch. 188, § 3, eff from and after passage (approved January 20, 1956).

Cross References —
Procedure for removal of elective county officer, see §§ 25-5-7 et seq.

JUDICIAL DECISIONS

1. In general.
Board of supervisors, upon filing of judgment finding substantial basis for a removal election, may not inquire whether removal petition was signed by requisite number of voters, or whether the removal council's findings are valid. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

A judgment of the removal council is not void because final decision was reached and judgment signed at a place other than the place of hearing, where it shows the hearing was at the place designated by law. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.
63A Am. Jur. 2d, Public Officers and Employees §§ 250 et seq.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 270–272, 276–284, 286–295, 299–302.

§ 25-5-25. Judgment of council.

The council shall keep minutes of its final judgments, and the disposition of each petition shall be recorded therein. If it be the judgment of the council that sufficient cause has not been shown to justify the removal of the officer, then the petition shall be dismissed and no new petition shall be filed or entertained for a period of one (1) year from the date of the order dismissing the petition.

If, however, the council shall be of the opinion that sufficient cause has been shown to justify the removal of the officer, then notice to the qualified electors of the county involved shall be given, in accordance with the general election laws of the State of Mississippi in the matter of filling vacancies in county offices, that an election shall be held in said county to determine the question of whether or not said county official shall be removed from office.

HISTORY:
Codes, 1942, § 4054-03; Laws, 1956, ch. 188, § 3, eff from and after passage (approved January 20, 1956).

JUDICIAL DECISIONS

1. In general.
Board of supervisors, upon filing of judgment finding substantial basis for a removal election, may not inquire whether removal petition was signed by requisite number of voters, or whether the removal council's findings are valid. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

A judgment of the removal council is not void because final decision was reached and judgment signed at a place other than the place of hearing, where it shows the hearing was at the place designated by law. State ex rel. Patterson v. Bd. of Supervisors, 234 Miss. 26, 105 So. 2d 154, 1958 Miss. LEXIS 457 (Miss. 1958).

RESEARCH REFERENCES

Am. Jur.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 270–272, 276–284, 286–295, 299–302.

§ 25-5-27. Resignation of officer.

The officer named in the removal petition shall continue to perform the duties of his office until the results of said special removal election shall be officially proclaimed. If, however, the officer named in the petition for removal shall offer his resignation before the issuance of the proclamation for the holding of special removal election, it shall be accepted, shall take effect on the date it is offered, and the vacancy shall be filled as provided by law for the filling of any vacancy in an elective county office. The officer who either resigns or is removed shall not be eligible to fill the vacancy caused by his removal or resignation, or serve as deputy in the office from which he resigns or is removed.

HISTORY:
Codes, 1942, § 4054-04; Laws, 1956, ch. 188, § 4, eff from and after passage (approved January 20, 1956).

Cross References —
Notice of elections to fill vacancies, see § 23-15-835.

Filling vacancies in county office, see § 23-15-839.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 170 et seq.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 214–216, 263 et seq.

§ 25-5-29. Conduct of election.

The special removal election shall be conducted and the results thereof canvassed and certified in all respects as nearly as practicable in like manner as general elections, unless otherwise expressly provided in this chapter, but any such election falling within sixty (60) days next preceding a general election date shall be held on the day of the general election by the same managers designated to hold the general election, but on the special ballots provided in Section 25-5-31.

HISTORY:
Codes, 1942, § 4054-05; Laws, 1956, ch. 188, § 5, eff from and after passage (approved January 20, 1956).

Cross References —
Conduct of elections generally, see § 23-15-373.

Return of ballots to election commissioners, canvass and declaration of results, see § 23-15-601.

Holding elections to fill vacancies, see § 23-15-833.

Notice of elections to fill vacancies, see § 23-15-835.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 133 et seq.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CJS.
67 C.J.S., Officers §§ 263 et seq.

§ 25-5-31. Form of the ballot.

The ballot at said special removal election shall be in the form usually prescribed for special elections, and shall be headed "Official Ballot." Each ballot shall contain the following instructions to the voters: "Mark a cross (X) or check mark (√) in the square at the right of "yes" or "no"." Immediately thereunder shall appear the question: "Shall ________ (naming the officer) be removed from the office of ________ ?" Immediately under such question shall be printed the words "yes" and "no", and immediately following each of said words shall be placed a square in which the voter may indicate his preference.

HISTORY:

Codes, 1942, § 4054-06; Laws, 1956, ch. 188, § 6, eff from and after passage (approved January 20, 1956).

Cross References —

Form and contents of ballots, generally, see §§ 23-15-359 et seq.

RESEARCH REFERENCES

Am. Jur.

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-33. Results of election.

The election commissioners of the county, or a quorum thereof, shall meet at the office of the county registrar at 9:00 A. M. of the day following the special removal election, and shall then proceed to canvass, tabulate, and certify the results of the election as now provided by the general election laws of the State of Mississippi. The certificate of said results, showing the total votes cast for the removal of the officer, the total votes cast against the removal of the officer, and the total number of qualified electors in the county or supervisors district in which said election was held, shall be forwarded to the Governor. If a majority of all qualified electors of said county or supervisors district in which said election shall have been held shall not have voted in said election, either for or against the removal, or if a majority of the qualified electors voting in the election shall oppose removal, the officer shall not be removed and shall not thereafter during his term of office be subject to another removal election. If a majority of all qualified electors of said county or supervisors district in which said election shall have been held have voted either for or against removal, and if a majority of the qualified electors voting in said election shall vote for the removal of the officer, then the Governor shall issue his proclamation declaring the office vacant, removing said officer, and appointing a suitable person to fill the vacancy until the same can be filled in a special election to be held not more than sixty (60) days after the aforesaid proclamation of the Governor. No officer shall be subject to a removal petition until he shall have served at least one (1) year of his term.

HISTORY:

Codes, 1942, § 4054-07; Laws, 1956, ch. 188, § 7, eff from and after passage (approved January 20, 1956).

Cross References —

Runoff elections, see § 23-15-305.

Return of ballots to election commissioners, and canvass and declaration of results, see § 23-15-601.

Procedure when election of county officer or district attorney is contested, see §§ 23-15-951, 23-15-953.

RESEARCH REFERENCES

Am. Jur.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-35. Appeals.

A person desiring to contest the proclaimed results of a special removal election may, within twenty (20) days after said proclamation, file a petition in the office of the clerk of the chancery court of the county, setting forth the grounds upon which the election is contested. The chancellor shall forthwith be notified in writing of the filing of such petition and shall forthwith fix a day, not less than ten (10) nor more than twenty (20) days distant, for hearing the contest. If the contest shall be filed by a citizen who voted in the removal election, process according to law for hearings in vacation shall be served on the officer sought to be removed. If the petition be filed by the officer sought to be removed, process in like manner and form shall be had on any one of the citizens shown to have circulated the removal petition or any section thereof. On the day fixed, at the county courthouse, beginning at 9:00 A. M. central standard time, some chancellor of a district other than that of the county of the contest, to be designated in writing by the chief justice of the Supreme Court, shall proceed to hear and determine the contest under the laws applicable to general elections. No question shall be considered or adjudicated by the chancellor on such appeal except that of whether the election was lawfully held in compliance with the general election laws of the State of Mississippi, and mere irregularities not affecting the final result shall not serve to invalidate the election. In those cases where the chancellor adjudicates that the election was not lawfully held within the requirements of the general election laws of the state, then, subject to the right of appeal herein prescribed, he shall fix the date of another election on the same question and shall direct the county election commissioners to proceed accordingly. Appeals from the decree of the chancery court may be taken to the Supreme Court, but such appeal shall be perfected within fifteen (15) days from the date of the decree sought to be appealed. The Supreme Court shall treat the same as a preference case to be determined with all reasonable expedition. Upon order of the chief justice, such appeals may be heard and determined at a time when the court otherwise would be in recess. Pending final determination of the contest, no appeal to the chancery court or to the Supreme Court shall supersede the proclaimed results of a special removal election.

HISTORY:
Codes, 1942, § 4054-07; Laws, 1956, ch. 188, § 7, eff from and after passage (approved January 20, 1956).

Cross References —
Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

Return of ballots to election commissioners, and canvass and declaration of results, see § 23-15-601.

Procedure when election of county officer or district attorney contested, see § 23-15-951.

RESEARCH REFERENCES

Am. Jur.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

§ 25-5-37. Penalties.

(1) Any person who signs any removal petition with any name other than his own, or who knowingly signs his name more than once to such petition, or who knowingly signs such petition when he is not a qualified elector shall be guilty of a felony and, upon conviction, may be punished as such for a term in the penitentiary not to exceed five (5) years.

(2) Any person who knowingly executes any affidavit required by Sections 25-5-3 through 25-5-37 knowing the same to be false, or who issues any certificate required by the same knowing it to be false, or who makes any statement of any kind required by said sections to be under oath, either in writing or orally, knowing the same to be false shall be guilty of perjury and, upon conviction, may be punished by imprisonment in the state penitentiary for a term not to exceed ten (10) years.

(3) It shall be a felony for any officer sought to be removed under the provisions of the aforesaid sections to attempt by force, threats, bribery, or intimidation to hinder or interfere with the free circulation or signing of any removal petition and, upon conviction thereof, he shall be punished by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years.

(4) Any person in the possession of a removal petition who either wilfully suppresses, neglects, or fails to cause same to be filed with the county registrar shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not to exceed six (6) months or by fine not to exceed Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

HISTORY:
Codes, 1942, § 4054-08; Laws, 1956, ch. 188, § 8, eff from and after passage (approved January 20, 1956).

Cross References —
Signing requirements for petitions to governing body of state or subdivision, see § 1-3-75.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge – Bad Faith Dismissal of At-Will Employee.

CHAPTER 7.

FEES

Sec.
25-7-1. Lawful to demand specific fees only.
25-7-3. Clerk of the Supreme Court.
25-7-5. Payment of fee for recording opinions.
25-7-7. Fees due from state or county.
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25-7-63. Determination of compensation of jurors.
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25-7-67. Appraisers of the estates of decedents.
25-7-69. Officers and jurors in ad quod damnum proceedings.
25-7-71. To persons bringing back prisoner on extradition.
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25-7-77. Fees for attachment for rent.
25-7-79. Fees of officers and witness in unlawful entry and detainer court.
25-7-81. Secretary of State.
25-7-83. Executive Director of the Department of Finance and Administration.
25-7-85. Secretary of State; fee relating to land transactions.
25-7-87. Fees of state officers to be paid into Treasury.
25-7-89. Fee for transcript of testimony and exhibits to testimony, or copy of such transcript and exhibits.

§ 25-7-1. Lawful to demand specific fees only.

It shall be lawful for the Clerk of the Supreme Court, the clerks of the circuit and chancery courts, the clerks of the justice court, masters and commissioners in chancery, sheriffs, constables, justice court judges, notaries public, and other officers and persons named in this chapter to demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more.

HISTORY:

Codes, 1880, § 439; 1892, § 1987; 1906, § 2163; Hemingway's 1917, § 1844; 1930, § 1782; 1942, § 3928; Laws, 1981, ch. 471, § 47; Laws, 1982, ch. 423, § 28; Laws, 1986, ch. 459, § 30, eff from and after July 1, 1986.

Cross References —

Prohibition against legislation increasing or regulating county charges, costs, and fees, unless applicable to all counties, see Miss. Const. Art. 4, § 91.

Fees and costs not being payable except upon of bill or account in writing, see § 11-53-67.

Requirement that table of fees be posted, see § 11-53-79.

Penalty for extortion of excessive or unearned fees, see § 97-11-33.

JUDICIAL DECISIONS

1. In general.

In a consolidation action where the plaintiffs paid a total of $67,450.00 in filing fees to the circuit clerk, the plaintiffs were entitled to a refund of all filing fees and administrative costs in excess of the statutorily established amounts. Hinds County Bd. of Supervisors v. Abnie, 934 So. 2d 996, 2006 Miss. LEXIS 376 (Miss. 2006).

Chancery court is without jurisdiction to correct overallowance, by supervisors of clerk's fees in connection with bond issue. McQuay, Inc. v. Hunter, 234 Miss. 84, 105 So. 2d 476, 1958 Miss. LEXIS 466 (Miss. 1958).

Clerk of chancery court was not entitled to fee of 50¢ for certifying to validation of bonds of county. Board of Sup'rs v. Kergosien, 146 Miss. 885, 112 So. 595, 1927 Miss. LEXIS 257 (Miss. 1927).

A witness for the state in criminal prosecutions who has been committed to jail to secure his appearance before the circuit court, is not entitled to a per diem allowance of fees for the whole period of his detention, but only for that covered by his attendance upon court when in session. Marshall County v. Tidmore, 74 Miss. 317, 21 So. 51, 1896 Miss. LEXIS 149 (Miss. 1896).

OPINIONS OF THE ATTORNEY GENERAL

In those instances where fees or costs are not set by statute, under Section 25-7-1, the Mississippi Department of Human Services may not enter into an agreement with the chancery clerks or other county officials (e.g., county sheriffs), providing for an agreed upon amount to be paid by MDHS for filing fees or other costs of a case. 1995 Miss. Op. Att'y Gen. 273.

§ 25-7-3. Clerk of the Supreme Court.

The Clerk of the Supreme Court shall charge the following fees:

(a) General docket fee, for filing the record on appeal in a civil or criminal case	$ 200.00
(b) General docket fee, for filing the record on appeal in a civil or criminal case	200.00
(c) Confidential miscellaneous docket fee	200.00
(d) Admission of new attorneys	30.00
(e) Act of Congress certificate	25.00
(f) Certificate of admission replacement	25.00
(g) Certificate of good standing replacement	10.00
(h) Attest stamp	5.00
(i) Order from Minute Book	10.00
(j) Regular copying	.50 per page

(k) Copying from bound volumes or records	2.00 per page
(*l*) Copy of mandate	10.00
(m) Minimum copy charge	1.00
(n) Notary fee	2.50
(o) Decision list charge	5.00
(p) Handling charge and retrieval and delivery charges on completed Supreme Court records (to be retained out of deposit)	
On-site retrieval	10.00
Off-site retrieval	15.00
(q) Forfeited deposits on completed Supreme Court records	100.00
(r) Petition for rehearing	50.00

Said general docket fee shall be collected from the appellant by the clerk of the lower court and forwarded to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall charge the maximum amount allowable by law for services rendered where charges for such services are provided by statute; for any other services rendered, the amount charged shall be consistent with the cost of providing such services. All fees shall be paid in the form of cash, cashier's check, or money order or by a check on the account of an attorney payable to the Clerk of the Supreme Court. All fees authorized to be assessed and collected by the Clerk of the Supreme Court shall be deposited into the State General Fund, except that One Hundred Dollars ($100.00) of the general docket fee set under paragraph (a), Twenty-five Dollars ($25.00) of the miscellaneous docket fee set under paragraph (b), One Hundred Dollars ($100.00) of the confidential miscellaneous fee set under paragraph (c), Fifteen Dollars ($15.00) of the act of Congress certificate set under paragraph (e), Ten Dollars ($10.00) of the certificate of admission replacement set under paragraph (f), Two Dollars and Fifty Cents ($2.50) of the attest stamp set under paragraph (h), Five Dollars ($5.00) of the order from minute book set under paragraph (i), Seven Dollars ($7.00) of the copy of mandate set under paragraph (*l*), Fifty Dollars ($50.00) of the forfeited deposits on completed Supreme Court records set under paragraph (q), Twenty-five Dollars ($25.00) of the petition for rehearing fee under paragraph (r), and the total amount charged for any other services rendered shall be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45.

HISTORY:

Codes, 1880, § 440; 1892, § 1988; 1906, § 2164; Hemingway's 1917, § 1845; 1930, § 1783; 1942, § 3929; Laws, 1978, ch 335, § 35; Laws, 1984, ch. 407; Laws, 1986, ch. 490; Laws, 1989, ch. 336, § 1; Laws, 1993, ch. 386, § 1; Laws, 2012, ch. 329, § 3, eff from and after July 1, 2012.

Editor's Notes —

Laws of 2012, ch. 329, § 11, provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Cross References —

Oath and bond of clerk of Supreme Court, see § 9-3-13.

Payment of the filing fee when the appeal is by the state or any political subdivision, see § 11-27-29.

Fees and costs not being payable except upon production of bill, see § 11-53-67.

Requirement that table of fees be posted, see § 11-53-79.

Fee of chancery clerk for taking acknowledgment and filing deed to land sold for taxes, see § 25-7-21.

Penalty for extortion of excessive or unearned fees, see § 97-11-33.

JUDICIAL DECISIONS

1. In general.

City is not liable for costs in prosecuting for violation of an ordinance. Booze v. Yazoo City, 95 Miss. 699, 49 So. 518, 1909 Miss. LEXIS 278 (Miss. 1909).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Costs §§ 1 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

1983 Mississippi Supreme Court Review: Perfection of Appeals – Rule 48. 54 Miss. L. J. 75, March 1984.

§ 25-7-5. Payment of fee for recording opinions.

The fees of the Clerk of the Supreme Court for recording opinions as required by law shall be payable semiannually out of the state treasury from the proper appropriation, on the certificate of either of the judges of the Supreme Court that the service has been well performed and that the account is true, correct, and just.

HISTORY:

Codes, 1880, § 1413; 1892, § 1989; 1906, § 2165; Hemingway's 1917, § 1846; 1930, § 1784; 1942, § 3930.

Cross References —

Penalty for public officer extorting excessive or unearned fees, see § 97-11-33.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Costs §§ 34- 35.

§ 25-7-7. Fees due from state or county.

The clerk of the Supreme Court shall make out a separate, detailed account of fees adjudged against the state, in cases where the state fails in the prosecution or suit or in case of felony where the defendant appeals on pauper oath and the costs cannot be made out of his estate, or against any county, and due him in civil or criminal cases, keeping the fees in each case separate, and shall present it to the attorney general, who shall examine the fee bill in each case and approve it if found to be correct. The fee bill thus approved shall be presented to the supreme court for allowance. If the court allow the same, it shall direct in criminal cases that it be paid out of the county treasury of the county where the prosecution was begun, on the order of the board of supervisors thereof; and in civil cases, that it be paid out of the state or county treasury, as the case may be. The board of supervisors shall allow said claim for fees against the county on presentation of a duly certified copy of the judgment of the supreme court ordering the same to be paid; and the auditor shall issue a warrant, on the order of the supreme court, for such costs against the state in civil cases to be paid by the state treasurer out of the proper appropriation.

HISTORY:

Codes, 1880, § 441; 1892, § 1990; 1906, § 2166; Hemingway's 1917, § 1847; 1930, § 1785; 1942, § 3931.

Editor's Notes —

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws, 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Provision for making and filing bill of costs assessed upon determination of cause, see § 11-53-65.

Fees and costs not being payable except upon production of bill, see § 11-53-67.

§ 25-7-9. Clerks of the chancery court.

(1) The clerks of the chancery courts shall charge the following fees:

(a) For the act of certifying copies of filed documents, for each complete document	$ 1.00
(b)(i) Recording each deed, will, lease, amendment, subordination, lien, release, cancellation, order, decree, oath, etc., per book and page listed where applicable; for the first fifteen (15) pages	$ 10.00
Each additional page	$ 1.00
(ii) Sectional index entries per section or subdivision lot	$ 1.00
(c) Recording each deed of trust, for the first fifteen (15) pages	$ 15.00
Each additional page	$ 1.00
Sectional index entries per section or subdivision lot	$ 1.00
(d)(i) Recording oil and gas leases, cancellations, etc., including indexing in general indices; for the first fifteen (15) pages	$ 18.00
Each additional page	$ 1.00
(ii) Sectional index entries per section or subdivision lot	$ 1.00
(iii) Recording each oil and gas assignment per assignee	$ 18.00
(e)(i) Furnishing copies of any papers of record or on file:	
If performed by the clerk or his employee, per page	$.50
If performed by any other person, per page	$.25
(ii) Entering marginal notations on documents of record	$ 1.00
(f) For each day's attendance on the board of supervisors, for himself and one (1) deputy, each	$ 20.00

(g) For other services as clerk of the board of supervisors an allowance shall be made to him (payable semiannually at the July and January meetings) out of the county treasury, an annual sum not exceeding $3,000.00

(h) For each day's attendance on the chancery court, to be approved by the chancellor:

For the first chancellor sitting only, clerk and two (2) deputies, each .... $ 50.00

For the second chancellor sitting, clerk only .... $ 50.00

Provided that the fees herein prescribed shall be the total remuneration for the clerk and his deputies for attending chancery court.

(i) On order of the court, clerks and not more than two (2) deputies may be allowed five (5) extra days for each term of court for attendance upon the court to get up records.

(j) For public service not otherwise specifically provided for, the chancery court may by order allow the clerk to be paid by the county on the order of the board of supervisors, an annual sum not exceeding $5,000.00

(k) For each civil filing, to be deposited into the Civil Legal Assistance Fund .... $ 5.00

The chancery clerk shall itemize on the original document a detailed fee bill of all charges due or paid for filing, recording and abstracting same. No person shall be required to pay such fees until same have been so itemized, but those fees may be demanded before the document is recorded.

(2) The following fees shall be a total fee for all services performed by the clerk with respect to a complaint which shall be payable upon filing and shall accrue to the chancery clerk at the time of filing. The clerk or his successor in office shall perform all duties set forth without additional compensation or fee to wit:

(a) Divorce to be contested	$75.00
(b) Divorce uncontested	$30.00
(c) Alteration of birth or marriage certificate	$25.00
(d) Removal of minority	$25.00
(e) Guardianship or conservatorship	$75.00
(f) Estate of deceased, intestate	$75.00
(g) Estate of deceased, testate	$75.00
(h) Adoption	$75.00
(i) Land dispute	$75.00
(j) Injunction	$75.00
(k) Settlement of small claim	$30.00
(*l*) Contempt in child support	$75.00
(m) Partition suit	$75.00
(n) Any cross-complaint	$25.00
(o) Commitment	$75.00

(3) For every civil case filed:

(a) An additional fee to be deposited to the credit of the

Comprehensive Electronic Court Systems Fund established in Section 9-21-14	$10.00
(b) An additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45	$40.00

(4) Cost of process shall be borne by the issuing party. Additionally, should the attorney or person filing the pleadings desire the clerk to pay the cost to the sheriff for serving process on one (1) person or more, or to pay the cost of publication, the clerk shall demand the actual charges therefor, at the time of filing.

HISTORY:

Codes, 1880, § 442; 1892, § 1991; 1906, § 2167; Hemingway's 1917, § 1848; 1930, §§ 1786, 1804; 1942, §§ 3932, 3952; Laws, 1928, chs. 87, 227; Laws, 1940, ch. 230; Laws, 1950, ch. 291; Laws, 1968, ch. 361, § 65; Laws, 1970, ch. 397, § 1; Laws, 1970, ch. 398, § 2; Laws, 1981, ch. 497, § 1; Laws, 1993, ch. 481, § 2; Laws, 2004, ch. 505, § 10; Laws, 2005, ch. 323, § 1; Laws, 2006, ch. 447, § 1; Laws, 2006, ch. 573, § 2; Laws, 2006, ch. 577, § 1; Laws, 2007, ch. 476, § 1; Laws, 2010, ch. 398, § 1; Laws, 2012, ch. 329, § 4, eff from and after July 1, 2012.

Joint Legislative Committee Note —

Section 1 of ch. 447, Laws, 2006, effective from and after July 1, 2006 (approved March 21, 2006), amended this section. Section 1 of ch. 577, Laws, 2006, effective from and after July 1, 2006 (approved April 21, 2006), also. Section 2 of ch. 573, Laws, 2006, effective July 1, 2006 (approved April 24, 2006), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 31, 2006 meeting of the Committee.

Editor's Notes —

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2004, ch. 505,§ 10.

On June 22, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 323, § 1.

Laws of 2006, ch. 573, § 4 provides as follows:

"SECTION 4. It is the intent of the Legislature that the amendments contained in Sections 2 and 3 of this act shall be integrated with the amendments to the corresponding code sections contained in Laws of 2006, ch. 327, and Laws of 2006, ch. 447, and Laws of 2006, ch. 577, without regard to the effective date of such acts."

Laws of 2012, ch. 329, § 11, provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Cross References —

Oath and bond of clerk of chancery court, see § 9-5-131.

Duties of clerk of chancery court, see §§ 9-5-131 et seq.

Complaint filing assessments for court administration fund, see § 9-17-5.

Attendance allowance for clerks in quo warranto proceedings, see § 11-39-59.

Requirement that clerk of court post table of fees, § 11-53-79.

Complaint filing assessments for public county law libraries, see § 19-7-31.

Chancery clerk's fees for collection of delinquent taxes, see § 25-7-21.

Fee for filing affidavit of municipal clerk when land is to be sold for nonpayment of municipal taxes, see § 27-43-4.

Chancery clerk's fee for examining records for names of lienors, see § 27-43-11.

When fees for sale of land to state for taxes are paid to county officers, see § 29-1-93.

Chancery clerk's fees for recording honorable discharges and service certificates of veterans, see § 35-3-13.

Complaint filing assessments for court education and training costs, see § 37-26-3.

Complaint filing assessments for supplemental court education and training costs, see § 37-26-9.

Affidavit for commitment, see § 41-21-65.

Chancery clerk's fees for filing and indexing records, reports and notices of perpetual care cemeteries, see § 41-43-38.

Filing of brownfield agreements, see § 49-35-17.

Authority to charge fees for filing records and reports pertaining to trust funds for church maintenance, see § 79-11-47.

Chancery clerk's compensation for filing and indexing notice of lien, see § 85-8-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular fees.
3. Other services.

1. In general.

The 1950 Amendment establishing a fee for all officers, including Chancery clerks, of 25 cents per hundred words for furnishing transcripts of records, the phrase "all officers" expresses a legislative intent to make the provision applicable to all court clerks who perform the stated functions. Superior Oil Co. v. Foote, 216 Miss. 728, 65 So. 2d 453, 1953 Miss. LEXIS 687 (Miss. 1953).

Supreme Court was required to accept construction of provision of Code 1880 governing fees, where construction was brought forward in subsequent Codes. Hooker v. Gully, 182 Miss. 36, 180 So. 65, 1938 Miss. LEXIS 140 (Miss. 1938).

Supreme Court clerk in taxing costs on appeal can only allow to lower court clerk, who sent up record, fees based on number of words appearing in copies thereof made by him. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

Chancery court lacked power to make allowance to chancery clerk for services rendered, such power resting solely within discretion of supervisors. Tunica County v. Shannon, 160 Miss. 197, 132 So. 533, 1931 Miss. LEXIS 123 (Miss. 1931).

2. Particular fees.

Trial court did not abuse its discretion when it ordered a former spouse to pay the statutorily authorized fee of two dollars per page for the transcript of records; though the only specific statute relating to making copies of final records and transcripts is Miss. Code Ann. § 25-7-13(6) and generally relates to circuit clerks, the statute specifically provides that all other officers can similarly be charged, and therefore § 25-7-13(6) was the appropriate statute for the chancery clerk to utilize in such matters rather than Miss. Code Ann. § 25-7-9, which permitted a chancery clerk to charge 50 cents when the clerk made "uncertified copies." Cook v. Whiddon, 866 So. 2d 494, 2004 Miss. App. LEXIS 130 (Miss. Ct. App. 2004).

Chancery court was without power to adjudicate the amount of fees to which chancery clerk was entitled to receive for services rendered in a B.A.W.I. bond issue where the fees for the clerk's services had been allowed and paid by the board of supervisors in an amount erroneously fixed under repealed former subsection (t) of this section. McQuay, Inc. v. Hunter, 234 Miss. 84, 105 So. 2d 476, 1958 Miss. LEXIS 466 (Miss. 1958).

Lower court clerk having acted on agreement of counsel that original exhibits should be certified to Supreme Court in lieu of transcript thereof after clerk had made copies of exhibits, though he was not required to act on such agreement, was not entitled to fees he would have earned by filing transcript of exhibits in Supreme Court. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

Board of supervisors is authorized to provide an abstract of title to lands in the county and cause it to be kept up to date at all times, and in such case chancery clerk may charge abstract fees. Yazoo & M. V. R. Co. v. Edwards, 78 Miss. 950, 29 So. 770, 1901 Miss. LEXIS 140 (Miss. 1901).

3. Other services.

"Other services" must be similar to services for which fees are particularly provided, hence chancery clerk is entitled to general allowance for "other services" only under second provision of statute governing his fees and not under provision governing fees of circuit clerk. Hooker v. Gully, 182 Miss. 36, 180 So. 65, 1938 Miss. LEXIS 140 (Miss. 1938).

OPINIONS OF THE ATTORNEY GENERAL

Chancery court clerks are entitled to receive fee of $30.00 for each day's attendance on chancery court when chancellor is hearing cases in term time or vacation or hearing ex parte matters; clerks are not entitled to receive fee when chancellor does not hold court or transact business of court. 1990 Miss. Op. Att'y Gen. 169.

Statute which allows chancery court clerks to charge set fees for "recording deeds, deeds of trust, wills, leases, amendments, subordinations, liens, orders, decrees, oaths, etc., including indexing," does not encompass recording of minutes of Board of Supervisors; allowance which authorizes up to $1,500 annually for "other services as clerk of board of supervisors" encompasses those duties relating to maintenance of board minutes. 1990 Miss. Op. Att'y Gen. 308.

Payment as set forth in statute is not contingent upon whether deputy is paid by county or paid by chancery clerk. 1990 Miss. Op. Att'y Gen. 599.

It was question of fact as to whether or not someone not physically present was "in attendance" upon court and statute does not mention physical presence; for such claims made upon board of supervisors, board would have to make factual determination that deputy or clerk was in attendance upon board. 1990 Miss. Op. Att'y Gen. 701.

Had legislature intended to authorize $2.00 per page fee for recording minutes, service so important and so commonly performed for boards of supervisors by chancery clerk's office, such would have been stated specifically in (1)(f) and not placed in general "etc." category. 1990 Miss. Op. Att'y Gen. 742.

If Family Master is sitting, rather than chancellor, Chancery Clerk may be authorized to be paid fees for himself and his deputies as if first chancellor were sitting; fee for each day's attendance may not be reduced below $30.00, but it is up to chancellor to determine whether attendance is necessary. 1992 Miss. Op. Att'y Gen. 491.

Fee paid under Section 25-7-9(2) covers general services in connection with case; that fee does not cover ancillary matters such as filing land records or certifications that arise from case and separate fees for such services under Section 25-7-9(1) should be charged. 1993 Miss. Op. Att'y Gen. 514.

There is $1.00 fee in addition to general $6.00 fee for sectional entries within one section or subdivision. If deed requires entry in two sections then $2.00 would be charged; if deed requires one entry or six in one section then charge is $1.00; same is true of subdivisions. 1993 Miss. Op. Att'y Gen. 514.

Under Section 25-7-9, a chancery clerk may not require the payment of a fee for the filing of a Motion to Set Aside Judgment in a case that has already been filed. 1995 Miss. Op. Att'y Gen. 125.

Based on Section 25-7-9, a $30.00 court cost deposit is all that can be charged upon the filing of an uncontested divorce, unless the clerk makes a motion to the court for additional security and the court so orders. 1995 Miss. Op. Att'y Gen. 502.

Section 25-7-9(1)(b) does not apply to recording redemptions since Sections 25-7-21(4)(d) &amp; (e) specifically provide fees for the recording and abstracting of redemptions from tax sales. The chancery clerk should not collect two fees for the performance of the same service. 2001 Miss. Op. Att'y Gen. 19.

Under Section 25-7-9(1)(f) the proper fee for filing additional pages for UCC filings is $1.00. 1996 Miss. Op. Att'y Gen. 348.

Assessments are not clerk's fees and therefore are not included in Section 25-7-9. 1996 Miss. Op. Att'y Gen. 804.

A chancery clerk is no longer entitled to charge per page for the filing of a guardianship, even if the case was originally filed with the clerk's office prior to the change in the fee schedule. See Section 25-7-9. 1996 Miss. Op. Att'y Gen. 857.

The $75 fee received by chancery clerks in lunacy cases covers all of the normal services that a court clerk would perform with regard to any petition or complaint before the court, but would not include administrative services which seem to be more like services that would be performed by a social worker, such as consultations with family or friends, scheduling physicians, providing insurance information to hospitals, and making arrangements for prescreening and follow-ups, etc.; thus, if the chancery court clerk performs such administrative services, the court may allow a reasonable fee therefor over and above the clerk's statutory filing fee. 1998 Miss. Op. Att'y Gen. 689.

The chancery clerk may only charge the fee set out in subsection (1)(b) for each assignment filed, not for each document to which the assignment is applicable; thus, if there is only one assignment even though it may apply to multiple deeds of trust, only one document has been filed, and the filing fee is $6.00; for each document to which the assignment applies, and for which a marginal notation of the assignment must be made, the clerk may charge $0.50. 2002 Miss. Op. Att'y Gen. 132.

A chancery clerk is not required to charge other county departments. 2002 Miss. Op. Att'y Gen. 304.

The appellant must pay the appropriate filing fee to the chancery court to perfect an appeal from a decision of the Mississippi Department of Environmental Quality, subject to a pauper's right of appeal. 2002 Miss. Op. Att'y Gen. 378.

There is no statutory authority for chancery clerks to charge flat monthly fees to abstractors for use of the fax machine in the office of the clerk or to charge fees for sending faxes to members of the public. 2002 Miss. Op. Att'y Gen. 334.

If a board of supervisors failed to budget enough money to cover the number of meetings actually held and attended by a chancery clerk that he attends and should be paid for, the department should petition the board for any budget revision needed to fulfill the statutory mandates of this section. 2003 Miss. Op. Att'y Gen. 667.

If the chancery judge orders an amount paid by the county for "public service not otherwise specifically provided for" and a board of supervisors has not budgeted any amount of the sum, this section allows, but does not require, a board of supervisors to make the payment. 2003 Miss. Op. Att'y Gen. 667.

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. 2003 Miss. Op. Att'y Gen. 112.

This section, prior to the 2004 amendment, authorized the charging of a $ 1.00 fee for each sectional index entry per section or subdivision necessary to properly reflect the recording of the warranty deed, deed of trust and subordination affecting all of the lots in question. O'2005 Miss. Op. Att'y Gen. 638.

Section 25-7-9 must be read along with Uniform Chancery Court Rule 9.01. 2006 Miss. Op. Att'y Gen. 129.

Where the plaintiff files a complaint against the defendant, and the defendant files an answer containing one or more counterclaims, there is no basis to charge the $25.00 fee. But when one of the defendants of the original cause of action files a complaint against another of the original defendants, then the clerk may charge the original defendant filing this new complaint with a co-defendant in the original cause of action the $25.00 fee. Likewise, where one of the plaintiffs in the original cause of action files a complaint against another of the original plaintiffs, then the Clerk may charge the original plaintiffs filing this new complaint against a co-plaintiff in the original cause of action the $25.00 fee. 2006 Miss. Op. Att'y Gen. 129.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Costs §§ 1 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Forms 5-12. (clerks of court).

§ 25-7-10. Additional allowance for chancery court clerks in certain counties.

In counties having two (2) judicial districts and having a regularly appointed deputy chancery court clerk, the chancery court clerk may be allowed One Thousand Dollars ($1,000.00) per month. This amount may be allowed and paid monthly to the chancery court clerk by the board of supervisors of each county affected by this section out of the general fund of the county and may be in addition to all other allowances not provided by law.

HISTORY:
Laws, 1998, ch. 583, § 1, eff from and after October 1, 1998.

Editor's Notes —
Laws, 1998, ch. 583, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or from and after October 1, 1998, whichever occurs later."

On July 24, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws, 1998, ch. 583, § 1.

§ 25-7-11. Recording fees itemized.

The chancery clerk shall itemize on the record, following the instrument recorded by him, a detailed fee bill of all charges due or paid for filing and recording same. A fee bill shall not be allowed him for a receipt given for the deed or other instrument unless the same shall be demanded, and such fee shall not be due until the clerk shall have complied with all the provisions of the law on the subject of the record of instruments.

HISTORY:

Codes, 1892, § 1992; 1906, § 2168; Hemingway's 1917, § 1849; 1930, § 1787; 1942, § 3933.

Cross References —

Fees not being payable until bill produced, see § 11-53-67.

Requirement that table of fees be posted, see § 11-53-79.

Penalty for extortion of excessive or unearned fees, see § 97-11-33.

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. 2003 Miss. Op. Att'y Gen. 112.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Costs §§ 40 et seq.

§ 25-7-13. Clerks of the circuit court.

(1) The clerks of the circuit court shall charge the following fees:

(a) Docketing, filing, marking and registering each complaint, petition and indictment	$ 85.00

The fee set forth in this paragraph shall be the total fee for all services performed by the clerk up to and including entry of judgment with respect to each complaint, petition or indictment, including all answers, claims, orders, continuances and other papers filed therein, issuing each writ, summons, subpoena or other such instruments, swearing witnesses, taking and recording bonds and pleas, and recording judgments, orders, fiats and certificates; the fee shall be payable upon filing and shall accrue to the clerk at the time of collection. The clerk or his successor in office shall perform all duties set forth above without additional compensation or fee.

(b) Docketing and filing each motion to renew judgment, notice of renewal of judgment, suggestion for a writ of garnishment, suggestion for a writ of execution and judgment debtor actions and issuing all process, filing and recording orders or other papers and swearing witnesses	$ 35.00
(c) For every civil case filed, an additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14	$ 10.00

(d) For every civil case filed, an additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45 .... $ 40.00

(2) Except as provided in subsection (1) of this section, the clerks of the circuit court shall charge the following fees:

(a) Filing and marking each order or other paper and recording and indexing same .... $ 2.00

(b) Issuing each writ, summons, subpoena, citation, capias and other such instruments .... $ 1.00

(c) Administering an oath and taking bond .... $ 2.00

(d) Certifying copies of filed documents, for each complete document .... $ 1.00

(e) Recording orders, fiats, licenses, certificates, oaths and bonds:
First page .... $ 2.00
Each additional page .... $ 1.00

(f) Furnishing copies of any papers of record or on file and entering marginal notations on documents of record:
If performed by the clerk or his employee, per page $1.00
If performed by any other person, per page .... $.25

(g) Judgment roll entry .... $ 5.00

(h) Taxing cost and certificate .... $ 1.00

(i) For taking and recording application for marriage license, for filing and recording consent of parents when required by law, for filing and recording medical certificate, filing and recording proof of age, recording and issuing license, recording and filing returns .... $ 20.00

The clerk shall deposit Fourteen Dollars ($14.00) of each fee collected for a marriage license in the Victims of Domestic Violence Fund established in Section 93-21-117, on a monthly basis.

(j) For certified copy of marriage license and search of record, the same fee charged by the Bureau of Vital Statistics of the State Board of Health.

(k) For public service not particularly provided for, the circuit court may allow the clerk, per annum, to be paid by the county on presentation of the circuit court's order, the following amount $5,000.00

However, in the counties having two (2) judicial districts, such above allowance shall be made for each judicial district.

(*l*) For drawing jurors and issuing venire, to be paid by the county .... $ 5.00

(m) For each day's attendance upon the circuit court term, for himself and necessary deputies allowed by the court, each to be paid by the county .... $ 50.00

(n) Summons, each juror to be paid by the county upon the allowance of the court .... $ 1.00

(o) For issuing each grand jury subpoena, to be paid by the county on allowance by the court, not to exceed Twenty-five Dollars ($25.00) in any one (1) term of court .... $ 1.00

(p) For each civil filing, to be deposited into the Civil Legal Assistance Fund .... $ 5.00

(3) On order of the court, clerks and deputies may be allowed five (5) extra days for attendance upon the court to get up records.

(4) The clerk's fees in state cases where the state fails in the prosecution, or in cases of felony where the defendant is convicted and the cost cannot be made out of his estate, in an amount not to exceed Four Hundred Dollars ($400.00) in one (1) year, shall be paid out of the county treasury on approval of the circuit court, and the allowance thereof by the board of supervisors of the county. In counties having two (2) judicial districts, such allowance shall be made in each judicial district; however, the maximum thereof shall not exceed Eight Hundred Dollars ($800.00). Clerks in the circuit court, in cases where appeals are taken in criminal cases and no appeal bond is filed, shall be allowed by the board of supervisors of the county after approval of their accounts by the circuit court, in addition to the above fees, for making such transcript the rate of Two Dollars ($2.00) per page.

(5) The clerk of the circuit court may retain as his commission on all money coming into his hands, by law or order of the court, a sum to be fixed by the court not exceeding one-half of one percent (½ of 1%) on all such sums.

(6) For making final records required by law, including, but not limited to, circuit and county court minutes, and furnishing transcripts of records, the circuit clerk shall charge Two Dollars ($2.00) per page. The same fees shall be allowed to all officers for making and certifying copies of records or papers which they are authorized to copy and certify.

(7) The circuit clerk shall prepare an itemized statement of fees for services performed, cost incurred, or for furnishing copies of any papers of record or on file, and shall submit the statement to the parties or, if represented, to their attorneys within sixty (60) days. A bill for same shall accompany the statement.

HISTORY:

Codes, 1880, § 443; 1892, § 1993; 1906, § 2169; Hemingway's 1917, § 1850; 1930, §§ 1788, 1804; 1942, §§ 3934, 3952; Laws, 1928, chs. 87, 227; Laws, 1938, ch. 292; Laws, 1940, ch. 230; Laws, 1948, ch. 237; Laws, 1950, ch. 239; Laws, 1958, ch. 330; Laws, 1968, ch. 361, § 65; Laws, 1968, ch. 398, §§ 1, 2; Laws, 1978, ch. 361, § 1; Laws, 1985, ch. 461, § 2; Laws, 1993, ch. 481, § 3; Laws, 1994, ch. 406, § 1; Laws, 1995, ch. 537, § 1; Laws, 1999, ch. 485, § 1; Laws, 2001, ch. 344, § 1; Laws, 2004, ch. 505, § 9; Laws, 2006, ch. 327, § 1; Laws, 2006, ch. 573, § 3; Laws, 2006, ch. 577, § 2; Laws, 2008, ch. 473, § 1; Laws, 2012, ch. 329, § 5; Laws, 2012, ch. 355, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note —

Section 1 of ch. 327, Laws, 2006, effective from and after passage (approved March 09, 2006), amended this section. Section 1 of ch. 577, Laws, 2006, effective from and after July 1, 2006 (approved April 21, 2006), also amended this section. Section 3 of ch. 573, Laws, 2006, effective July 1, 2006 (approved April 24, 2006), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 31, 2006 meeting of the Committee.

Section 5 of ch. 329, Laws, 2012, effective July 1, 2012, amended this section. Section 1 of ch. 355, Laws, 2012, effective from and after July 1, 2012, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Notes —

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 505, § 9.

On July 1, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 473, § 1.

Laws of 2006, ch. 573, § 4 provides as follows:

"SECTION 4. It is the intent of the Legislature that the amendments contained in Sections 2 and 3 of this act shall be integrated with the amendments to the corresponding code sections contained in Laws of 2006, ch. 327, Laws of 2006, ch. 447, and Laws of 2006, ch. 577 without regard to the effective date of such acts."

Laws of 2012, ch. 329, § 11, provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Cross References —

Oath and bond of circuit clerk, see § 9-7-121.

Circuit clerk's allowance for attendance in quo warranto proceedings, see § 11-39-59.

Fees not being payable until bill produced, see § 11-53-67.

Requirement that clerk of court post table of fees, see § 11-53-79.

Circuit clerk's fees in cases appealed from municipalities, see § 25-7-17.

Circuit clerk's fees for enrolling certificates of state income tax indebtedness, see § 27-7-55.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Public services not particularly provided for.

1. In general.

In a consolidation action where the plaintiffs paid a total of $67,450.00 in filing fees to the circuit clerk, the plaintiffs were entitled to a refund of all filing fees and administrative costs in excess of the statutorily established amounts. Hinds County Bd. of Supervisors v. Abnie, 934 So. 2d 996, 2006 Miss. LEXIS 376 (Miss. 2006).

Trial court did not abuse its discretion when it ordered a former spouse to pay the statutorily authorized fee of two dollars per page for the transcript of records; though the only specific statute relating to making copies of final records and transcripts is Miss. Code Ann. § 25-7-13(6) and generally relates to circuit clerks, the statute specifically provides that all other officers can similarly be charged, and therefore § 25-7-13(6) was the appropriate statute for the chancery clerk to utilize in such matters rather than Miss. Code Ann. § 25-7-9, which permitted a chancery clerk to charge 50 cents when the clerk made "uncertified copies." Cook v. Whiddon, 866 So. 2d 494, 2004 Miss. App. LEXIS 130 (Miss. Ct. App. 2004).

Although a county circuit court clerk had no authority under § 25-7-13 to require a $100 filing fee for an appeal from the municipal court, the fee could be recast as the bond required by URCCC 12.02(B); however, it was nevertheless improper for the circuit clerk to set $100 as the unchanging estimate of court costs and it was improper for payment to be demanded in cash. Mitchell v. Parker, 2001 Miss. App. LEXIS 161 (Miss. Ct. App. Apr. 24, 2001), op. withdrawn, sub. op., 804 So. 2d 1066, 2001 Miss. App. LEXIS 369 (Miss. Ct. App. 2001).

Fee compensation plan for circuit clerks did not create unconstitutional incentive to convict defendants where circuit clerk's role was prescribed by statute, circuit clerk made no decisions affecting the outcomes of cases, and thus circuit clerk had no judicial power. Nicholson ex rel. Gollott v. State, 672 So. 2d 744, 1996 Miss. LEXIS 146 (Miss. 1996).

Section 25-7-13 does not authorize the circuit clerk to charge the customary filing fee in cases where the circuit court is acting as an appellate court. Staples v. Blue Cross & Blue Shield, Inc., 585 So. 2d 747, 1991 Miss. LEXIS 583 (Miss. 1991).

The fee schedule in § 25-7-13 applies to actions in eminent domain, and funds handled by the clerk in such actions are monies subject to the commission as authorized under § 25-7-13(5). Pursuant to this section, the commission awarded to the clerk may not exceed ½ of one percent; however, the amount of the commission is to be determined by the court. In fixing the clerk's commission, the court should exercise its discretion in light of the responsibility assumed and services rendered by the clerk. The commission paid to the clerk should be paid by the condemning authority since assessment of a fee or commission may not be used to diminish the compensation received by the landowner. Mississippi State Highway Com. v. Herban, 522 So. 2d 210, 1988 Miss. LEXIS 62 (Miss. 1988).

A certificate of the cost of a transcript of records should show the number of words. Luke v. Mississippi Employment Sec. Com., 239 Miss. 292, 123 So. 2d 231, 123 So. 2d 696, 1960 Miss. LEXIS 285 (Miss. 1960).

Under subsection (d) of this section, allowance of fees to circuit clerks can be made only upon itemized accounts of the claimed amounts. Washington County v. Cocke, 206 Miss. 569, 40 So. 2d 301, 1949 Miss. LEXIS 284 (Miss. 1949).

The current federal census is the exclusive evidence of the population of the state, county, city, town, township and village, unless otherwise definitely expressed in the particular legislative enactment. Hester v. Copiah County, 186 Miss. 716, 191 So. 496, 1939 Miss. LEXIS 266 (Miss. 1939).

Supreme Court clerk in taxing costs on appeal can only allow to lower court clerk, who sent up record, fees based on number of words appearing in copies thereof made by him. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

A clerk of the circuit court is not entitled to an allowance for fees under this section in cases where the state has failed in prosecution, unless the account for said fees shall be itemized and allowed by the court. Chatters v. Coahoma County, 73 Miss. 351, 19 So. 107, 1895 Miss. LEXIS 138 (Miss. 1895).

2. Public services not particularly provided for.

The 1950 Amendment establishing a fee for all officers, including Chancery clerks, of 25 cents per hundred words for furnishing transcripts of records, the phrase "all officers" expresses a legislative intent to make the provision applicable to all court clerks who perform the stated functions. Superior Oil Co. v. Foote, 216 Miss. 728, 65 So. 2d 453, 1953 Miss. LEXIS 687 (Miss. 1953).

County court clerk, who by law is the same person as the circuit court clerk, and who, as circuit clerk, received an allowance for public service not particularly provided for under subsection (c) of this section, was not entitled to an additional allowance, as county clerk, for public service not particularly provided for, since by statute the compensation of the county clerk is expressly confined to the fees allowed by law for like duties in the circuit and chancery courts, which means that the county clerk must look to the fixed schedule of the fees specifically allowed by law for services in the circuit and chancery courts, and there is no authority to make allowance to the county clerk as such for public service not particularly provided for. Covington v. Quitman County, 196 Miss. 416, 17 So. 2d 597, 1944 Miss. LEXIS 208 (Miss. 1944).

The allowance by the circuit court to its clerk of the sum of $50 for public services not particularly provided for, being a matter within its discretion, and the allowance to him of his fees for his attendance on the court and for drawing jurors being one of the compensations fixed by this section, the board of supervisors is without discretion to reject the same, and may be compelled by mandamus to provide for the payment thereof. Chatters v. Coahoma County, 73 Miss. 351, 19 So. 107, 1895 Miss. LEXIS 138 (Miss. 1895).

OPINIONS OF THE ATTORNEY GENERAL

Minutes of courts are undoubtedly final records required by law, and Attorney General's office is therefore unable to say that statute does not allow circuit clerks up to $2.00/page for preparation and recording of minutes of courts. 1990 Miss. Op. Att'y Gen. 92.

Whether the attendance of a deputy is necessary is a question of fact for the judge to determine; if the judge believes the attendance of a deputy or deputies was necessary on any particular day then the court should allow the additional fees for attendance by the deputy or deputies. 1991 Miss. Op. Att'y Gen. 765.

A deputy who substitutes for a clerk, when the clerk is supposed to attend, is necessary. If the business of the court requires the clerk and one or more deputies then the deputies are necessary. 1991 Miss. Op. Att'y Gen. 765.

If so ordered by the court, an outgoing circuit clerk may be entitled to his commission on fees for work performed during his term, even though the case may not be concluded until after his term has ended. 1992 Miss. Op. Att'y Gen. 447.

Circuit clerk's fee for taking pauper affidavits in criminal cases is not under Section 25-7-13(1) but rather compensation is provided for under subsection (2)(k) which allows per annum amount of $5,000. 1994 Miss. Op. Att'y Gen. 1016.

Based on Section 25-7-13, the clerk would not be entitled to additional fees for more than one writ, capias or subpoena associated with a single case. 1996 Miss. Op. Att'y Gen. 185.

Applying Section 25-7-13(1)(a) a clerk would not be entitled to collect a docketing fee when a case is remanded to the file and later reinstated or when a case is removed to Federal Court and later returned to the court since the clerk would have already collected a fee for the original complaint. 1996 Miss. Op. Att'y Gen. 743.

Applying Section 25-7-13(1)(a) a clerk is entitled to collect a docketing fee for a case that has been transferred from another court or when a case is received on a change of venue since the clerk would be performing a service for the first time with regard to that complaint. 1996 Miss. Op. Att'y Gen. 743.

A clerk is limited to the fee provided for under subsection (1) of this section, and to additional fees provided for under subsection (2) that are not included in subsection (1). Services charged for under paragraphs 2(a) to 2(c) are provided for in subsection (1) as "service performed by the clerk with respect to each complaint, petition or indictment". 1997 Miss. Op. Att'y Gen. 487.

A circuit clerk may be entitled to a commission to be determined by the court of up to one-half of one percent on eminent domain cases. 1998 Miss. Op. Att'y Gen. 775.

A circuit court judge may exercise his discretion to allow the circuit clerk to retain up to ½ of 1 percent of fines that are paid through the circuit clerk's office. 1999 Miss. Op. Att'y Gen. 61.

The phrase "attending to the court," for purposes of subsection (2)(m), includes working on the court's business in the clerk's office, as well as actually being inside the courtroom or the judges' chambers. 2002 Miss. Op. Att'y Gen. 23.

A county circuit clerk is entitled to be paid once for himself or a deputy for each day of the term then in session and the court may authorize additional deputies for the term then in session, and the court may allow up to five additional days for the clerk and deputies when the court is not in session to get up records. 2002 Miss. Op. Att'y Gen. 45.

RESEARCH REFERENCES

ALR.

Attorney's personal liability for expenses incurred in relation to services for client. 66 A.L.R.4th 256.

Am. Jur.

5 Am. Jur. Pl & Pr Forms (Rev), Forms 5-12 (certificates of clerk of court).

20 Am. Jur. 2d, Costs §§ 1 et seq., 97 through 103, 105- 107.

§ 25-7-14. Prepayment of chancery or circuit court fees by state or political subdivision.

Neither the state, nor any county, city, town, or village, nor any state board, nor any state, county, city, town, or village officer, in his official character, may be required to prepay the cost of filing a document or an instrument with, or obtaining a copy of any filed document or instrument obtained from, the office of the chancery or circuit clerk. If the cost for filing a document or an instrument or obtaining a copy of a document or instrument is not paid at the time of filing or obtaining a copy of the document or instrument, then the clerk shall furnish an itemized statement and payment shall be paid in the same manner as other claims are paid by the governing body or official having authority to pay claims against the governing body.

HISTORY:

Laws, 1997, ch. 419, § 1, eff from and after July 1, 1997.

Cross References —

Security for costs not required, see § 11-53-13.

§ 25-7-15. Allowances for deputy circuit court clerks.

(1) In counties having two (2) judicial districts and having a regularly appointed deputy circuit court clerk who shall serve in the judicial district of the county other than the judicial district of the county in which the circuit court clerk resides, the circuit court clerk shall be allowed One Thousand Dollars ($1,000.00) per month. This amount shall be allowed and paid monthly to the circuit court clerk by the board of supervisors of each county affected by this section out of the general fund of the county and shall be in addition to all other allowances now provided by law.

(2) The boards of supervisors of every county shall pay to the circuit clerk the sum of Seven Hundred Dollars ($700.00) for each session of the grand jury for preparing the grand jury docket, subpoenas, calendar and related services.

(3) The circuit clerks of every county having an assessed valuation in excess of Sixty-five Million Dollars ($65,000,000.00) at the last federal census and having located therein two (2) municipalities with population in excess of thirty thousand (30,000) respectively at the last federal census and bordering on the Gulf of Mexico, of every county bordering on the Gulf of Mexico and the State of Alabama, and of counties having a population in excess of one hundred fifty thousand (150,000) according to the federal census of 1960, and any county with a population in excess of sixty-five thousand (65,000) at the last federal census of 1970 and having an assessed valuation in excess of One Hundred Twenty-five Million Dollars ($125,000,000.00) according to the 1975 assessment, shall receive a sum of not less than Twelve Thousand Dollars ($12,000.00) annually for employment of deputies whose duties are devoted substantially to registration of voters. The sum shall be payable monthly out of any available funds in the county treasury.

HISTORY:

Codes, 1942, §§ 3934.5, 3934.7; Laws, 1952, ch. 219, §§ 1, 2; Laws, 1962, ch. 262, §§ 1-4; Laws, 1964, ch. 511; Laws, 1966, ch. 439, § 1; Laws, 1968, ch. 360, § 1; Laws, 1976, ch. 330; Laws, 1977, ch. 385; Laws, 1994, ch. 643, § 1; Laws, 1996, ch. 500, § 1, eff from and after October 1, 1997.

Editor's Notes —

The United States Attorney General, by letter dated December 9, 1996, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws, 1996, ch. 500, § 1.

Cross References —

Fees and costs not being payable until bill produced, see § 11-53-67.

Requirement that table of fees be posted, see § 11-53-79.

OPINIONS OF THE ATTORNEY GENERAL

Board of supervisors is not required to contribute county funds in excess of statutory amounts; issue of compensating deputy circuit clerks whether for working overtime or otherwise is matter that must be resolved between clerk and his deputies, and is not issue that rests with board of supervisors. 1990 Miss. Op. Att'y Gen. 175.

Miss. Code Section 25-7-15(1) clearly applies only to counties "having two (2) judicial districts". 1993 Miss. Op. Att'y Gen. 25.

§ 25-7-17. Fees of circuit clerks in certain municipal appeals.

The clerk of the circuit court of any county in Mississippi in which is located a municipality with a population of seventy-five hundred (7,500) or more, according to the last federal census, may be allowed an amount not exceeding Five Hundred Dollars ($500.00) for any one year to be paid out of the municipal treasury of said municipality on the filing of an itemized account of fees in each special case appealed from any city, where said case is disposed of by nolle prosequi, passed to files, or verdict of not guilty. Said fee bills shall be approved by the city attorney for payment and shall be presented to the municipal council or board of aldermen of said municipality for allowance, in the discretion of said council or board. This section shall not apply to counties wherein is located a municipality of less than ten thousand (10,000) and more than seventy-five hundred (7,500) population, in which said county there has been created and maintained a county court under Chapter 9, Title 9, of the Mississippi Code of 1972.

HISTORY:
Codes, 1942, § 3935; Laws, 1940, ch. 274; Laws, 1942, ch. 228.

Cross References —
Fees not being payable until bill produced, see § 11-53-67.

§ 25-7-19. Sheriffs.

(1) The sheriffs of the various counties of the State of Mississippi shall charge the following fees:

(a) A uniform total fee in all criminal and civil cases for the service or attempted service of any process, summons, warrant, writ or other notice as may be required by law or the court, each $35.00

(b) In all cases where there is more than one (1) defendant residing at the same household, service on each additional defendant .... $ 5.00

(c) After final judgment has been enrolled, notice of further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings, shall be deemed a new suit and the sheriff shall be entitled to the following fee $35.00

(d) Taking bonds of every kind (for purposes of this fee multiple bonds for criminal charges arising out of a single incident or transaction shall be considered a single bond) $25.00

(e) Attendance in habeas corpus proceeding in vacation, eminent domain court and commitment cases $25.00

(f) On all money made by virtue of any decree, execution or attachment, or other process, the following commissions, to wit:

On the first One Hundred Dollars ($100.00), five percent (5%),
On the second One Hundred Dollars ($100.00), four percent (4%),
On all sums over Two Hundred Dollars ($200.00), three percent (3%).

(g) For all service of all process of every kind and nature issued from without the county wherein it is to be served, a fee of $35.00

In civil cases, all process sent out of the county, where issued to another county for service, shall be accompanied by a fee of Thirty-five Dollars ($35.00) to pay the sheriff's fee for his execution of such process unless the clerk or justice shall endorse on the process that the party at whose instance it issued had filed an affidavit of inability to pay costs thereof. All fees sent and unearned, and the whole of it, shall be unearned if the writ be not legally and properly executed and returned, and shall be remitted by the sheriff with the writ at his own expense.

(2)(a) The sheriff shall keep a complete account of every fee of every nature, commission or charge collected by him, and shall file an itemized statement thereof monthly, under oath, with the clerk of the board of supervisors of his county who shall preserve same as a part of the records of his office, and he shall make a remittance to the clerk of the board of supervisors of his county on or before the fifteenth of each month for deposit into the general fund of the county of all said fees, commissions and charges collected during the preceding month. A fee for attempted service of process is unearned absent two (2) documented actual attempts to serve the process.

(b) At least Ten Dollars ($10.00) from each fee collected and deposited into the county's general fund under the provisions of paragraphs (a), (c) and (g) of subsection (1) of this section shall be used for the sheriffs' salaries authorized in Section 25-3-25, as such Ten Dollar ($10.00) amount was authorized during the 2007 Regular Session in Chapter 331, Laws of 2007, for the purpose of providing additional monies to the counties for sheriffs' salaries.

(3) Any sheriff who shall knowingly fail to collect any fee established by law which was in fact collectible by him or having collected the fee shall fail to keep account of such fee or fail to deposit the fee with the clerk of the board of supervisors as provided by subsection (2), or such other person or office entitled thereto, shall be guilty of a misdemeanor in office and, upon conviction therefor, shall be fined in an amount not to exceed double the amount he failed to collect or pay over, or imprisoned for not to exceed six (6) months in the county jail, or be punished by both such fine and imprisonment.

This provision shall in no way lessen the sheriff's civil liability on his bond, but shall be an additional penalty for misfeasance or nonfeasance in office.

HISTORY:

Codes, 1880, § 444; 1892, § 1994; 1906, § 2170; Hemingway's 1917, § 1857; 1930, § 1789; 1942, §§ 3936, 3936.5; Laws, 1928, Ex ch. 17; Laws, 1930, ch. 119; Laws, 1932, ch. 201; Laws, 1938, Ex ch. 24; Laws, 1944, chs. 179, 320, § 1; Laws, 1950, ch. 250; Laws, 1952, ch. 217; Laws, 1958, chs. 321, 327; Laws, 1960, chs. 330, 331; Laws, 1964, ch. 421, § 1; Laws, 1966, ch. 440, § 1; Laws, 1968, ch. 361, § 1; Laws, 1970, ch. 399, § 1; Laws, 1971, ch. 318, § 1; Laws, 1974, ch. 324; Laws, 1977, ch. 442; Laws, 1980, ch. 455; Laws, 1993, ch. 366, § 1; Laws, 2007, ch. 331, § 1; Laws, 2014, ch. 323, § 1; Laws, 2015, ch. 404, § 1, eff from and after July 1, 2015.

Editor's Notes —

On June 15, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2007, ch. 331.

Cross References —

Sheriff's allowance for attendance in quo warranto proceedings, see § 11-39-59.

Duty of sheriff to execute and return process, see § 19-25-37.

Classification of counties for purposes of determining officers' salaries, see § 25-3-1.

Sheriff's fees for execution of warrant or seizure of property for delinquent income taxes, see § 27-7-61.

Sheriff's fees for execution of warrant or seizure of property for delinquent sales taxes, see § 27-65-63.

When fees for sale of land to state for taxes are payable to county officers, see § 29-1-93.

Fees of peace officers in traffic violation cases, see § 63-9-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Validity and construction in general.
2. Fees of sheriff.
3. —Additional fees of sheriff.

1. Validity and construction in general.

This section must be construed in the light of its purpose as gathered first from its letter, and secondly from the circumstances of its adoption insofar as these may interpret such purpose. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

Similar previous statute (Laws 1928, chap. 87), providing for a graduated schedule of fees for collection of ad valorem taxes and changing the collection period from one based on a fiscal year to that based on the calendar year, so that a sheriff taking office at the beginning of the calendar year would be entitled to the higher percentage of commissions notwithstanding that his predecessor had also received the higher percentage of commissions on the same year's taxes, was unconstitutional in so far as its operation was retroactive. Hartsfield v. Lafayette County, 185 Miss. 564, 189 So. 177, 1939 Miss. LEXIS 186 (Miss. 1939).

2. Fees of sheriff.

Commissioner who fails under decrees is entitled to like fees as sheriff for sales under execution under the laws in force at time of sale. Walker v. Walker, 221 Miss. 225, 72 So. 2d 243, 1954 Miss. LEXIS 530 (Miss. 1954).

No cross-appeal is necessary to obtain judgment in Supreme Court for fees fixed by statute when amount approved by Supreme Court is less than amount awarded appellee in trial court. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

In county with population in excess of 32,000, sheriff who furnishes to board of supervisors a deputy for attending board is entitled to sum of $5.00 per day under Code 1942, § 3952, instead of $3.00 per day under this section, for each day deputy is in attendance on board. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Sheriff's claim presented to county board of supervisors for entering, returning and serving the road overseer's commission, for services required of the sheriff by the board of supervisors for which no fees were fixed, and for executing decrees, judgments, orders of process of the Supreme Court, chancery court or board of supervisors, was not required to be accompanied by any evidence of performance or delivery of services to an amount equal to the compensation claimed. Board of Supervisors v. Jones, 199 Miss. 373, 24 So. 2d 844, 1946 Miss. LEXIS 206 (Miss. 1946).

Sheriff's claim presented to county board of supervisors for a sum not to exceed $50 a year for entering, returning and serving the road overseer's commission, and for services required of the sheriff by the board for which no fees were fixed, and for the same fees as are allowed for similar services in the circuit court for executing decrees, judgments, and orders of process of the Supreme Court, chancery courts, or boards of supervisors, was sufficiently itemized as to the nature and character of the services, and no detailed itemization of the particular instances of such services was required. Board of Supervisors v. Jones, 199 Miss. 373, 24 So. 2d 844, 1946 Miss. LEXIS 206 (Miss. 1946).

Code 1942, § 1597 is inapplicable to require sheriff's claim presented to county board of supervisors for services required of the sheriff by board of supervisors for which no fees were fixed and for executing decrees, judgments, orders of process of the Supreme Court, chancery courts, or board of supervisors, to contain detailed itemization of the particular instances of such services. Board of Supervisors v. Jones, 199 Miss. 373, 24 So. 2d 844, 1946 Miss. LEXIS 206 (Miss. 1946).

Evidence supported claim of former sheriff that he was entitled to allowance for entering, serving and reporting overseer's commissions, etc., for which no payment had been made as provided by this section. Holmes County v. Ellis, 195 Miss. 124, 13 So. 2d 635, 1943 Miss. LEXIS 123 (Miss. 1943).

Sheriff is not entitled to recover lost fees in justice court. Goolsby v. Board of Sup'rs, 153 Miss. 589, 121 So. 277, 1929 Miss. LEXIS 62 (Miss. 1929).

Statute providing for fees of sheriff does not limit compensation of commissioners making sales to a percentum of actual money paid into sheriff's hands, but to the amount realized under the sale. Powell v. Davis, 119 Miss. 175, 80 So. 556, 1918 Miss. LEXIS 27 (Miss. 1918).

Sheriffs who deliver to road overseer a copy of their appointment are not entitled to fees for entering and returning such copies, since a copy of appointment is not a "writ" within the meaning of the statute. Thomas v. Board of

Sup'rs, 69 Miss. 665, 12 So. 558, 1892 Miss. LEXIS 21 (Miss. 1892).

Sheriff is entitled to fees "on all money made by virtue of any decree, execution, attachment or other process" only when he collects the money; accordingly where defendant, after levy and advertisement, pays the judgment, the sheriff is not entitled to such fees. Wynne v. Mississippi & T. R. Co., 45 Miss. 569, 1871 Miss. LEXIS 104 (Miss. 1871) (under former enactment).

3. —Additional fees of sheriff.

In county of more than thirty-three thousand inhabitants not having two judicial districts, this section, and not § 3952, Code 1942, is statute applicable to sheriff's fees for summoning jurors in circuit court and for other services rendered and not otherwise provided for in connection with said court, and sheriff is entitled to maximum of $300.00 per year for such services. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Sheriff is not entitled to collect additional fees in the amount of $300 annually for executing judgments and decrees of circuit court as statute includes additional fees for this service only in supreme court, chancery court, and board of supervisors, the only allowance for additional fees to sheriff under subsection b of this section for service in circuit court being for summoning juries, impanelling grand juries, and for other services not otherwise provided for. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Ex-sheriff is entitled to recover additional compensation for services rendered to board of supervisors during his term of office when population of county is greater than that on basis of which compensation had been allowed, and allowances previously made for these services are not res judicata of claim for additional allowances. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Ex-sheriff's claim for additional fees for summoning jurors in circuit court and for other services rendered and not otherwise provided for in connection with said court during year 1940 is barred by six-year statute of limitations when his declaration is filed on August 18, 1947. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Ex-sheriff is not entitled to recover an additional $300.00 per year for executing decrees, judgments, and orders of process, for county court. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

In absence of cross-appeal and appellee's declaration failing to demand full amount sheriff could have successfully sued for as fees for serving overseers' commissions, Supreme Court cannot increase judgment, but will affirm judgment recovered. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Allowances under this section to former sheriff for attendance on sessions of the circuit court and board of supervisors were not res judicata to claim of sheriff, after expiration of his office, to be paid additional allowances under Code 1942, § 3952, where population of the county was in excess of 32,000. Holmes County v. Ellis, 195 Miss. 124, 13 So. 2d 635, 1943 Miss. LEXIS 123 (Miss. 1943).

As regards allowances to sheriff by board of supervisors for gasoline and oil, set up as a setoff to former sheriff's claim to additional allowances for services rendered, four of the judges of the supreme court were of the opinion that the allowances for gas and oil were illegal and should not have been made but three of them were of the opinion that having been allowed and paid him, he could not be charged back therewith. Holmes County v. Ellis, 195 Miss. 124, 13 So. 2d 635, 1943 Miss. LEXIS 123 (Miss. 1943).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff is entitled to $7.00 fee for bond taken on prisoner in sheriff's custody regardless of whether prisoner is county or city prisoner, but not when prisoner is taken to city court and city allows him to bond while there. 1992 Miss. Op. Att'y Gen. 841.

Miss. Code Section 25-7-19 has been amended to increase from $7 to $25 uniform fees allowed to county sheriffs for executing service of any process, summons, warrant, writ or other notice as may be required by law or courts. 1993 Miss. Op. Att'y Gen. 312.

Issuing traffic ticket does not constitute service for which sheriff is entitled to charge fee under Miss. Code Section 25-7-19(1)(a). 1993 Miss. Op. Att'y Gen. 329.

When state agency seeks to have process served sheriff should serve all process and perform other services for state agency without prepayment of costs; state agency is exempted from prepayment of costs, but not from payment if court assesses costs against agency at conclusion of case. 1993 Miss. Op. Att'y Gen. 561.

Fee set forth in Section 25-7-19(1)(d) of $25.00 is fee to be paid to sheriff for approving bond; if sheriff approves bond, sheriff is entitled to fee; if person other than sheriff, i.e., municipal police officer, approves bond, sheriff is not entitled to fee. 1993 Miss. Op. Att'y Gen. 872.

Salaried employee of municipality, such as city clerk, may not receive in individual capacity fees collected pursuant to ad valorem tax sales nor may police officer receive fees set forth for sheriff for service of tax sale notices. 1994 Miss. Op. Att'y Gen. 961.

Generally, justice court should direct process service to constable; however, when process is required to be directed to sheriff because constable is unqualified or unavailable, sheriff should charge fees as prescribed by 25-7-19 for "papers" to be served issued by justice court. 1994 Miss. Op. Att'y Gen. 785.

Once sheriff brings to attention of court that criminal fee is owed to county, this being done by making return on process, sheriff would not be liable under Subsection (3) of Section 25-7-19; sheriff must keep prisoner under terms set out in order of commitment issued by court and can not require that prisoner serve additional time or work additional days in order to pay off court cost and jail fees not included in the court's order of commitment. 1994 Miss. Op. Att'y Gen. 795.

The officer conducting the sale, under Section 25-7-19(1)(f), does hold out of the proceeds the fees and costs of the sale. The remaining proceeds, unless contested or when liability is in doubt, are applied to judgment liens in order of priority until satisfied. Any overage is returned to the judgment debtor. The return made to the court sets out the property levied on, proceeds of the sale and application of the proceeds and requests the court to award any costs and fees not set by law. 1996 Miss. Op. Att'y Gen. 163.

The sheriff's commission is computed on all money made by virtue of the execution and sale as provided by Section 25-7-19(1)(f), however Section 27-41-107 states that the minimum total of all fees shall be ten dollars. 1996 Miss. Op. Att'y Gen. 400.

The $25.00 service of process fee is a statutorily imposed court cost only if the process is served by certain law enforcement officials; there are no provisions for a private citizen (off-duty law enforcement officer) to serve a criminal warrant or to be paid for such service. 1999 Miss. Op. Att'y Gen. 668.

A board of supervisors could adopt a resolution for the county sheriff's department to charge a fee for performing criminal background checks, fingerprinting, etc., and the funds generated thereby should be paid into the general fund on a monthly basis. Trapp, Jr., 2002 Miss. Op. Att'y Gen. 286.

RESEARCH REFERENCES

Am. Jur.

70 Am. Jur. 2d, Sheriffs, Police, and Constables §§ 40, 41.

CJS.

80 C.J.S., Sheriffs and Constables §§ 386 et seq., 459-460.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Rules 4, 5, 7-11, and 15. 52 Miss. L. J. 3, March 1982.

§ 25-7-21. Tax collectors.

(1) From and after October 1, 1985, there will be no fees for the services of the tax collector, with the exception of taxes collected for taxing authorities other than the board of supervisors. For collecting taxes for authorities other than the board of supervisors, the fee shall be five percent (5%) of the taxes collected or an amount authorized by contract between the county and the outside taxing authority. A tax collector shall keep a complete account of every such fee collected and shall file an itemized statement thereof monthly, under oath, with the clerk of the board of supervisors of the county who shall preserve same as a part of the records of the office. The tax collector shall make a remittance to the clerk of the board of supervisors of the county on or before the twentieth of each month for deposit into the general fund of the county of all said fees collected during the preceding month.

(2) For the purpose of the limitations set forth in Section 27-39-321,

commissions for levies set by the board of supervisors shall be added to base collections of the general county fund for the 1984-1985 year only.

(3) Fees of publisher for publication – To the publishers, payable by the delinquent taxpayer, and to be collected and paid over by the tax collectors; or if the land be sold to the state to be paid by the state:

For each separate publication advertising lands for sale for taxes, for each separately described subdivision, as described and set out in the assessment rolls for the county .... $ 1.50

(4) Fees of chancery clerk for collection of delinquent taxes:

(a) For abstracting the list of lands sold for taxes, for each separately described section or subdivision lot .... $ 1.00

(b) For filing and recording deed to land sold for taxes $10.00

(c) For abstracting each deed in the sectional index, per section or subdivision lot .... $ 1.00

(d) For recording redemption of each $10.00

(e) For abstracting each redemption in the sectional index, per section or subdivision lot .... $ 1.00

(f) And, in addition, three percent (3%) on the amount necessary to redeem.

The several officers' fees shall be collected by the tax collector or chancery clerk and paid over to those entitled to same.

HISTORY:

Codes, 1880, § 444; 1892, § 1994; 1906, § 2170; Hemingway's 1917, § 1857; 1930, § 1789; 1942, § 3936; Laws, 1928, Ex ch. 17; Laws, 1930, ch. 119; Laws, 1932, ch. 201; Laws, 1938, Ex ch. 24; Laws, 1944, chs. 179, 320, § 1; Laws, 1950, ch. 250; Laws, 1952, ch. 217; Laws, 1958, chs. 321, 327; Laws, 1960, chs. 330, 331; Laws, 1964, ch. 421, § 1; Laws, 1966, ch. 440, § 1; Laws, 1968, ch. 361, § 1; Laws, 1970, ch. 399, § 1; Laws, 1973, ch. 382, § 1; Laws, 1977, ch. 386; Laws, 1985, ch. 425, § 2; Laws, 1995, ch. 468, § 1; Laws, 2005, ch. 410, § 1; Laws, 2007, ch. 364, § 2, eff from and after July 1, 2007.

Editor's Notes —

On June 22, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2005, ch. 410, § 1.

Cross References —

Allowance for attendance in quo warranto proceedings, see § 11-39-59.

Classification of counties for purposes of determining officer's salaries, see § 25-3-1.

Tax collector's duty to enforce payment of delinquent taxes, see § 27-41-11.

Collection of motor vehicle ad valorem taxes, see § 27-51-29.

Fees for collection of delinquent sales taxes, see § 27-65-63.

When fees for sale of land to state for taxes are payable to county officers, see § 29-1-93.

Collection of fees by peace officers in traffic violation cases, see § 63-9-19.

JUDICIAL DECISIONS

ANALYSIS

1. Validity and construction in general.
2. Fees of tax collector.
3. —Delinquent taxes.

1. Validity and construction in general.

Unless it is unavoidable and clearly manifested, court must not impute inadvertence to the legislature in enacting this section, especially where such inadvertence would have to be inferred in the face of repeated enactment of this section. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292, 1945 Miss. LEXIS 212 (Miss. 1945).

This section must be construed in the light of its purpose as gathered first from its letter, and secondly from the circumstances of its adoption insofar as these may interpret such purpose. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

Similar previous statute (Laws 1928, chap. 87), providing for a graduated schedule of fees for collection of ad valorem taxes and changing the collection period from one based on a fiscal year to that based on the calendar year, so that a sheriff taking office at the beginning of the calendar year would be entitled to the higher percentage of commissions notwithstanding that his predecessor had also received the higher percentage of commissions on the same year's taxes, was unconstitutional in so far as its operation was retroactive. Hartsfield v. Lafayette County, 185 Miss. 564, 189 So. 177, 1939 Miss. LEXIS 186 (Miss. 1939).

2. Fees of tax collector.

The proviso in the Act of 1944, ch. 179, increasing the fees to tax collectors in respect to ad valorem taxes, that "nothing herein shall permit a tax collector to collect such excess commission (over one per cent) more than once during any year beginning on the date aforesaid (the first Monday in January)," expresses both a limitation and a privilege, and such privilege is not to be diminished by reviving the provisions of the pre-existing act. § 3938, Code 1942, so as to create an inconsistency. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

It will be assumed that the expressed views of the attorney general, as embodied in his opinion construing the effect of a similar amendment to that amending statute fixing fees of tax collector (construing the effect of the 1938 Act upon the prior Act of 1932), were known to the Legislature, and that such views were consulted in the drafting of legislation of so great importance to the state. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

Where ad valorem tax collections during the first three months of 1944 were $38,126.91 to which sum the collector applied the fee schedule then applicable under Code 1942, § 3936, of five per cent on the first $10,000 and two per cent on the next $30,000, and during the month of April, 1944, the collector collected $1,366.49, upon which he deducted fees of five per cent pursuant to the fee schedule of Laws, 1944, ch. 179, which as an amendment of Code 1942, § 3936 became effective April 1, 1944, tax collector was entitled to continue the application of five per cent to collections thereafter not exceeding an additional $15,000. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

Purpose of Laws, 1944, ch. 179, was to provide increased compensation to tax collectors, and, in effecting this purpose, it sought to amend the existing law so as to increase the existing basis and to make it presently effective. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

The Act of 1944, increasing compensation to tax collectors, must be construed prospectively, since to increase compensation for services theretofore performed would violate § 96 of the Constitution. Brame v. Wyatt, 197 Miss. 679, 20 So. 2d 667, 1945 Miss. LEXIS 321 (Miss. 1945).

Similar previous statute (Laws 1928, chap. 87) had no application to the question of liability of the county for commissions at 5 per cent for the collection of poll taxes and commutation road taxes by the sheriff as tax collector, since the schedule of fees was fixed by chapter 206, of the Laws of 1924 and in force at the time of the collection, and such schedule was in no manner changed by this statute in so far as the percentage due for the collection of poll taxes and commutation taxes was concerned. Hartsfield v. Lafayette County, 185 Miss. 564, 189 So. 177, 1939 Miss. LEXIS 186 (Miss. 1939).

Statute relating to tax collector's fees and statute relating to refund of taxes improperly collected should be construed together in such manner as to work out consistent scheme. McKenzie v. Adams-Banks Lumber Co., 157 Miss. 482, 128 So. 334, 1930 Miss. LEXIS 309 (Miss. 1930).

Tax collector was entitled to only 3% commission of motor vehicle privilege taxes collected rather than 5% commission provided by general privilege tax law. Sartin v. Prentiss County, 156 Miss. 46, 125 So. 563, 1930 Miss. LEXIS 146 (Miss. 1930).

3. —Delinquent taxes.

Inadvertence cannot be ascribed to the Legislature in retaining provision allowing tax collector $1 for each conveyance of land sold to individuals for taxes, in amending Code 1942, § 3936(D) by Laws, 1944, ch. 179, § 1(D), subsection (d), in view of the fact that Code 1942, §§ 3936 and 9958 were enacted together in the Codes of 1930 and 1942, especially in view of the fact that § 9936 of 1942 Code re-enacted § 3256, Code of 1930, and enlarged rather than diminished the effect of lists of lands sold for taxes by providing that it should have the same effect of notice as a deed filed for record. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292, 1945 Miss. LEXIS 212 (Miss. 1945).

Fact that, although the legislature, in revamping the system from tax sales, has made many substantial and material alterations and readjustments, including changes in respect to procedure and compensation for sheriffs and tax collectors, and provision allowing fee of § 1 to tax collector for each conveyance to individual purchasers of lands at tax sales has been retained, indicates intention on part of the legislature to leave untouched this compensation to the tax collector for equal labor, tending to the same effect, although involved in different form. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292, 1945 Miss. LEXIS 212 (Miss. 1945).

This section, allowing tax collector fee of $1 for each conveyance of land sold to individuals for taxes, was not impliedly repealed by § 3273, Code 1930 (§ 9958, Code 1942), directing chancery clerk to execute deeds of conveyance to individuals purchasing lands at tax sales, in view of the fact that both sections were readopted in the 1942 Code, and especially in view of the fact that the provision pertaining to the tax collector's fee was re-enacted by Laws, 1944, ch. 179, § 1(D), subsection (d). Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292, 1945 Miss. LEXIS 212 (Miss. 1945).

Under statutes pertaining to tax collector's list of tax sales and requiring tax collector to deliver receipt to purchaser, a definite right or interest in the land sold at the tax sale is conveyed by the tax collector, which, when he performs his duty, constitutes a "conveyance" within the purview of Code 1942, § 3936(D), as amended by Laws, 1944, ch. 179, § 1(D), subsection (d), allowing tax collector fee of $1 for each conveyance of land sold to individuals for taxes. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292, 1945 Miss. LEXIS 212 (Miss. 1945).

Statute providing that State Auditor should issue warrants for fees of county officers in connection with lands sold to State for taxes after receiving land commissioner's calculations as to fees, if auditor should find fees correct, conferred upon auditor exercise of discretion and judgment in passing on fees, so that sheriff as tax collector seeking payment of fees growing out of the sale of delinquent tax lands to the state was not entitled to mandamus to compel auditor to issue warrants for such fees without first bringing suit. Thomas v. Price, 171 Miss. 450, 158 So. 206, 1934 Miss. LEXIS 284 (Miss. 1934).

Under statute providing that State Auditor should issue warrants for fees of county officers in connection with lands sold to state for taxes if auditor found fees as calculated by land commissioner correct, "correct" referred to both facts and law, and auditor was required to refuse to issue warrants both if calculation was wrong and if calculation was correct but claim was unauthorized by law. Thomas v. Price, 171 Miss. 450, 158 So. 206, 1934 Miss. LEXIS 284 (Miss. 1934).

Where court reduced assessed valuation on appeal, tax collector was entitled to 10 per cent penalty only in so far as assessment was legal. McKenzie v. Adams-Banks Lumber Co., 157 Miss. 482, 128 So. 334, 1930 Miss. LEXIS 309 (Miss. 1930).

Where appeal is decided in taxpayer's favor, taxpayer is entitled to refund of taxes illegally collected and also 10 per cent penalty collected. McKenzie v. Adams-Banks Lumber Co., 157 Miss. 482, 128 So. 334, 1930 Miss. LEXIS 309 (Miss. 1930).

Where tax collector had listed delinquent real property but had not delivered list to printer, taxpayer was liable for ten per cent penalty. Reed v. State, 155 Miss. 512, 124 So. 497, 1929 Miss. LEXIS 313 (Miss. 1929).

Where an assessment remains in abeyance pending action by the Board of Supervisors on a claim of overvaluation, the statutory penalty does not attach. Moss v. Gilchrist-Fordney Co., 24 F.2d 931, 1928 U.S. App. LEXIS 2213 (5th Cir. Miss. 1928).

OPINIONS OF THE ATTORNEY GENERAL

Section 25-7-9(1)(b) does not apply to recording redemptions since Sections 25-7-21(4)(d) &amp; (e) specifically provide fees for the recording and abstracting of redemptions from tax sales. The chancery clerk should not collect two fees for the performance of the same service. 2001 Miss. Op. Att'y Gen. 19.

Sections 25-7-21(4)(b) &amp; (c) has fees applicable to recording a deed that has matured to the purchaser at the land sale after the end of the redemption period. These fees apply when issuing a tax deed to the purchaser at a tax sale. 1995 Miss. Op. Att'y Gen. 459.

The fee set forth in subsection (4)(a) for taking the acknowledgment and filing the deed to land sold to individuals for taxes is imposed only if title matures in the purchaser. 2002 Miss. Op. Att'y Gen. 30.

A city does not pay the $ 1.00 fee set forth in subsection (4)(a) unless the property was struck to the city at a tax sale and has matured to the city. 2002 Miss. Op. Att'y Gen. 30.

If a justice court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court must immediately issue a warrant of removal according to §§ 89-7-35 or 89-7-41; the constable is entitled to a $25.00 fee for the service of the warrant as allowed by § 25-7-27(1)(b), but there is no provision for the justice court to charge any additional fee, other than the constable's fee, for the warrant of removal. 2002 Miss. Op. Att'y Gen. 157.

§ 25-7-23. Repealed.

Repealed by Laws, 1986, ch. 459, § 44, eff from and after July 1, 1986.

[Codes, 1880, § 449; 1892, § 2005; 1906, § 2181; Hemingway's 1917, § 1862; 1930, § 1791; 1942, § 3939; Laws, 1958, ch. 324, § 1; 1968, ch. 425, § 1; 1974, ch. 427]

Editor's Notes —

Former § 25-7-23 pertained to fees imposed by coroners.

§ 25-7-25. Justice courts.

(1) Costs and fees in the justice court shall be charged as follows and shall be paid in advance to the clerk of the justice court in accordance with the provisions of Section 9-11-10:

(a) A uniform total fee in all civil cases, whether contested or uncontested, which shall include all services in connection therewith, except as hereinafter stated, each $25.00

(b) For more than one (1) defendant, for service of process on each defendant 5.00

(c) After final judgment has been enrolled, further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings 15.00

(d) For all services in connection with the issuance of a peace bond 25.00

(e) For celebrating a marriage, and certificate thereof 10.00

(f) Commission to take depositions 5.00

(g) Appeal with proceedings and bond 5.00

(h) A clerk's fee to be collected in all criminal cases in which the defendant is convicted, as follows:

(i) For all violations in Title 63 other than driving under the influence of intoxicating liquor or reckless driving 5.00

(ii) All other criminal cases 25.00

(2) The justice court shall have the power to impose a fee not to exceed Fifty Dollars ($50.00) for an expungement or dismissal of any criminal affidavit, complaint or charge.

(3) In addition to the salary provided for in subsection (1) of Section 25-3-36, each justice court judge may receive a fee of not more than Twenty-five Dollars ($25.00) for each marriage ceremony he performs in the courtroom or offices of the justice court at any time the courtroom or offices are open to the public. This fee shall be paid by the parties to the marriage. Each justice court judge may receive money or gratuities for marriage ceremonies performed outside of and away from the courtroom and the offices of the justice court, that the parties to the marriage request to have performed at any time the courtroom or offices of the justice court are closed. These monies or gratuities, in an amount agreed upon by the parties to the marriage, are not considered fees for the justice court and are not subject to the requirements set forth in the provisions of Section 9-11-10.

HISTORY:

Codes, 1880, § 450; 1892, § 2006; 1906, § 2182; Hemingway's 1917, § 1863; 1930, § 1792; 1942, § 3940; Laws, 1922, ch. 165; Laws, 1944, ch. 185; Laws, 1952, ch. 242, § 1; Laws, 1958, ch. 340; Laws, 1966, ch. 441, § 1; Laws, 1972, ch. 420, § 1; Laws, 1975, ch. 409; Laws, 1978, ch. 336, § 1; Laws, 1979, ch. 476, § 1; Laws, 1982, ch. 423, § 5; Laws, 1985, ch. 440, § 5; Laws, 1993, ch. 435, § 1; Laws, 1994, ch. 576, § 1; Laws, 1997, ch. 591, § 1; Laws, 2005, ch. 454, § 1; Laws, 2008, ch. 403, § 1, eff from and after July 1, 2008.

Cross References —

Costs in criminal prosecutions, see Miss. Const. Art. 14, § 261.

Collectibility of fees provided for in this section, see § 9-11-5.

Prepayment of court costs as prerequisite to civil jurisdiction of justice court judge, see § 9-11-10.

Money paid into the justice court clerk clearing account, see § 9-11-18.

Receipt required of justice court judge collecting fee, see § 9-11-21.

Duty of justice court judge to post table of fees, see § 11-53-79.

Duty of justice court clerk with respect to fees charged under this section, see § 25-3-36.

Fees chargeable by justice court judge in connection with estrays, see § 69-13-329.

Authority of justice court judge to issue subpoenas, see § 99-33-5.

JUDICIAL DECISIONS

1. In general.

In declining to follow Melikian v. Avent (ND Miss. 1969) 300 F Supp 516, the reviewing court held that the civil side of the Mississippi fee system did not comport with due process, in light of the record which supported the inference that creditors would file more frequently in the courts of the judges who tended to favor the plaintiffs, and where there was testimony to this effect, and further testimony to the effect that judges knew and understood this to be the case, and where the undisputed evidence showed that cases were unevenly distributed throughout the judges in the various counties. Brown v. Vance, 637 F.2d 272, 1981 U.S. App. LEXIS 20552 (5th Cir. Miss. 1981).

Mississippi criminal statutory fees systems for compensating justices of the peace in Hinds and DeSoto Counties are violative of defendant's due process rights to trial before impartial tribunal under the Tumey-Ward test, where the possibility existed that judges in the aforementioned counties would compete for business by currying favor with arresting officers or taking biased actions to increase their case load, and where a judge might minimize the burden of proof required to convict the defendant or might be less than diligent in protecting the defendant's constitutional rights. Brown v. Vance, 637 F.2d 272, 1981 U.S. App. LEXIS 20552 (5th Cir. Miss. 1981).

Justice of peace was not disqualified to try liquor case because of $2.75 costs allowed in case of conviction. Hitt v. State, 149 Miss. 718, 115 So. 879, 1928 Miss. LEXIS 77 (Miss. 1928); Foote v. State, 115 So. 886 (Miss. 1928); Jones v. State, 115 So. 886 (Miss. 1928).

Justice of peace is entitled to fees for services in examination of felonies only on rendition of a detailed fee bill therefor, provided the amount of the fees does not exceed $50 in any one year. Conerly v. Lincoln County, 99 Miss. 731, 55 So. 963, 1911 Miss. LEXIS 243 (Miss. 1911).

OPINIONS OF THE ATTORNEY GENERAL

Costs and fees in justice court must be paid in advance to clerk of justice court, they should not be paid to judge. Riggs Dec. 9, 1993, A.G. Op. #93-0794.Foote v. State, 115 So. 886 (Miss. 1928).

$10.00 fee celebrating marriage, and certificate thereof goes to county; fee is not contingent upon judge charging fee, therefore, clerk is still mandated to collect this amount; as regards fees, there is no distinction between marriages performed outside courtroom or inside courtroom. Riggs Dec. 9, 1993, A.G. Op. #93-0794.Jones v. State, 115 So. 886 (Miss. 1928).

A justice court judge is an ex officio notary public, but may not receive additional fees for such services. 1998 Miss. Op. Att'y Gen. 460.

A constable is not entitled to receive a fee for service of process unless that process is actually served; if the constable returns the process "unable to serve" or "not found," then he has not actually served the process and he is not entitled to a fee. 1998 Miss. Op. Att'y Gen. 599.

There is no provision for a justice court to charge a jail cost as a cost of court for each day that a defendant is incarcerated. 2002 Miss. Op. Att'y Gen. 620.

A county may not impose any additional assessments in justice court that are not statutorily authorized. 2003 Miss. Op. Att'y Gen. 570.

Funds generated from assessment of traffic fines can be expended only for the DARE program or a similar program. 2006 Miss. Op. Att'y Gen. 72.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Justices of the Peace § 10.

CJS.
51 C.J.S., Justices of the Peace §§ 3, 15.

§ 25-7-27. Marshals and constables.

(1) Marshals and constables shall charge the following fees:

(a)(i) A uniform total fee in all civil cases, whether contested or uncontested, which shall include all services in connection therewith, except as stated otherwise in this section, each $35.00

(ii) A uniform total fee in all criminal cases, whether contested or uncontested, which shall include all services in connection therewith, except as stated otherwise in this section, each $35.00

(iii) In all cases where there is more than one (1) defendant, for service on each additional defendant .... $ 5.00

(iv) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry, the uniform fee shall be assessed upon subsequent successful service and an additional fee shall be due in the following amount $15.00

(v) When a complaining party has provided erroneous information to the clerk of the court relating to the service of process on the defendant or defendants and process cannot be served after diligent search and inquiry, and a defendant is served in a county other than the county in which a suit was filed, the constable in the county in which the suit was filed shall receive an additional fee, upon successful service of the defendant, in the following amount $15.00

(b) After final judgment has been enrolled, further proceedings involving levy of execution on judgments, and attachment and garnishment proceedings shall be a new suit for which the marshal or constable shall be entitled to the following fee .... $ 35.00

(c) For conveying a person charged with a crime to jail, mileage reimbursement in an amount not to exceed the rate established under Section 25-3-41(2).

To be paid out of the county treasury on the allowance of the board of supervisors, when the state fails in the prosecution, or the person is convicted but is not able to pay the costs.

(d) For other service, the same fees allowed sheriffs for similar services.

(e) For service as a bailiff in any court in a civil case, to be paid by the county on allowance of the court on issuance of a warrant therefor, an amount equal to the per diem compensation provided under Section 25-3-69 for each day, or part thereof, for which he serves as bailiff when the court is in session.

(f) For serving all warrants and other process and attending all trials in state cases in which the state fails in the prosecution, to be paid out of the county treasury on the allowance of the board of supervisors without itemization, subject, however, to the condition that the marshal or constable must not have overcharged in the collection of fees for costs, contrary to the provisions of this section, annually $1,800.00

(2) Marshals and constables shall be paid all uncollected fees levied under subsection (1) of this section in full from the first proceeds received by the court from the guilty party or from any other source of payment in connection with the case.

(3) In addition to the fees authorized to be paid to a constable under subsection (1) of this section, a constable may receive payments for collecting delinquent criminal fines in justice court pursuant to the provisions of Section 19-3-41(3).

HISTORY:

Codes, 1880, § 452; 1892, § 2008; 1906, § 2184; Hemingway's 1917, § 1865; 1930, § 1793; 1942, § 3941; Laws, 1920, ch. 132; Laws, 1944, ch. 186; Laws, 1946, ch. 406; Laws, 1952, ch. 243; Laws, 1958, ch. 323; Laws, 1972, ch. 421, § 1; Laws, 1975, ch. 377; Laws, 1978, ch. 333, § 1, ch. 450, § 1; Laws, 1986, ch. 441, § 4; Laws, 1986, ch. 459, § 31; Laws, 1987; ch. 366, § 1; Laws, 1992, ch. 504, § 1; Laws, 1999, ch. 516, § 2; Laws, 2004, ch. 505, § 8; Laws, 2006, ch. 325, § 1; Laws, 2007, ch. 331, § 2, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.).

Editor's Notes —

On August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2004, ch. 505, § 8.

On May 17, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2006 ch. 325, § 1.

On June 15, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2007, ch. 331.

Cross References —

Prepayment of court costs as prerequisite to civil jurisdiction of justice court judge, see § 9-11-10.

Duties of marshals, see § 21-21-1.

Duty of justice court clerk with respect to fees charged under this section, see § 25-3-36.

Constables' fees for executing process in military courts, see § 33-13-623.

JUDICIAL DECISIONS

1. Payment of fee.

Since the constable had shown only an expectation of continuing to collect fees prior to the court receiving funds in case, defendants were not liable to pay the constable service of process fees up front and the Constable failed to show deprivation of a right security by the constitution or a violation of 42 U.S.C.S. § 1983. Bailey v. Jefferson County, 2013 U.S. Dist. LEXIS 69050 (S.D. Miss. May 15, 2013).

OPINIONS OF THE ATTORNEY GENERAL

Fee for transporting prisoner from point of arrest to jail is fee that is paid by county where state fails in prosecution or person is unable to pay cost, and is paid in addition to state fail fee. 1990 Miss. Op. Att'y Gen. 200.

$15.00 fee represents total compensation allowed constable for both his original service and his subsequent contempt process service; in event constable was not involved in original criminal trial, service of contempt process would generate fee of $15.00; however, in no event would constable be entitled to receive additional $10.00 fee for serving contempt process, as this fee represents additional compensation constable receives for serving executions, attachments and garnishments. 1990 Miss. Op. Att'y Gen. 394.

Because a constable is not involved in service of process on nonresident defendants by certified mail, a fee may not be charged by him for such service. 1992 Miss. Op. Att'y Gen. 963.

Constable is entitled to fee allowed for service of writs of replevin and warrants of removal. 1992 Miss. Op. Att'y Gen. 500.

Miss. Code Section 25-7-27 provides for fees to be collected by constables; if constable has not completed required training, justice court clerk should not collect constable fee; however, even though constable who has not completed his training may not receive fees for serving justice court process, he must still faithfully serve and return any assigned papers. 1993 Miss. Op. Att'y Gen. 1.

Although duly elected constable may not receive compensation for service of process in Justice Courts other than fee provided for in statute, with respect to other courts, under Rule 4 of MRCP, constable, like any other individual above age of 18 who is not party to lawsuit, may receive compensation for service of process as private process server. 1993 Miss. Op. Att'y Gen. 483.

When constable executes service on wrong address supplied by plaintiff, constable is entitled to his fee, but if constable is later ordered by summons to execute process on defendant at different address, he must do so without any additional fee. 1994 Miss. Op. Att'y Gen. 902.

A Justice Court Judge cannot by court order increase the fee a Constable can receive for service process. 1995 Miss. Op. Att'y Gen. 3.

If a constable has been in office more than twenty-four months, as provided in Section 45-6-11, the statute would preclude a county from compensating a constable for fees generated under Section 25-7-27(1)(e), for serving warrants and other process, attending all trials in state cases in which the state fails in the prosecution, prior to satisfying the training requirement of Section 19-19-5(2), as amended. 1995 Miss. Op. Att'y Gen. 72.

Section 25-7-27(3) provides that constables shall be paid all uncollected fees from the first proceeds received by the court from the guilty party or from any other source of payment in connection with the case. 1995 Miss. Op. Att'y Gen. 367.

Under Section 25-7-27(1)(a), only one fee can be collected by a constable for all process served in each one case. 1995 Miss. Op. Att'y Gen. 361.

In regards to serving warrants for contempt of court, when a constable has already been paid a fee for services as allowed by Section 25-7-27(1)(a), for the underlying case, that constable would not be entitled to an additional fee for service of a contempt warrant. 1995 Miss. Op. Att'y Gen. 356.

If a constable has no participation in the initial court action, but then serves a contempt warrant, he would be entitled to a fee pursuant to Section 25-7-27(1)(a). 1995 Miss. Op. Att'y Gen. 356.

If a constable does not have any participation in an initial court action and later serves process for a contempt charge, he would be entitled to a fee pursuant to Section 25-7-27(1)(a). 1996 Miss. Op. Att'y Gen. 11.

Under Section 25-7-27(1)(c) a constable is entitled to receive $.20 a mile for transporting a prisoner from the point he takes custody to the point of incarceration. This mileage fee is considered court costs and should be paid by the defendant upon conviction. 1996 Miss. Op. Att'y Gen. 203.

Under Section 25-7-27, a constable is not entitled to receive an additional fee for arresting a subject on a contempt warrant if the constable is the officer that arrested the subject for the simple assault. 1996 Miss. Op. Att'y Gen. 477.

Based on Sections 25-7-27(1)(e) and 19-19-7, a constable has a duty to attend both the criminal and civil cases in justice court in his district. However, a constable may be compensated with a per diem as provided under Section 25-3-69 when such constable serves as a bailiff in civil cases only. No similar provision exists that would provide compensation to the constable for serving as bailiff in a criminal case. 1996 Miss. Op. Att'y Gen. 606.

Based on Section 25-7-27, a constable is entitled to one fee for all process served in one case. If a constable serves warrants from three different cases, he is entitled to three separate fees. However, a constable is not entitled to an additional fee for serving a contempt warrant for failure to appear if he also served the warrant in the underlying case in which the defendant failed to appear. 1996 Miss. Op. Att'y Gen. 762.

Constables may serve as bailiffs in civil cases in districts where they are not elected and receive compensation for such services. 1997 Miss. Op. Att'y Gen. 427.

Where defendant is convicted in multiple cases, is allowed to pay fees over time, and the court order is silent concerning the matter, the defendant may specify how the fees should be credited, or, in the absence of such a specification, the clerk may use discretion in determining how the fees should be credited. 1997 Miss. Op. Att'y Gen. 427.

Constables are entitled to receive service of process fees only if process is actually served, and are not entitled to such fees when unsuccessful attempts are made to serve the defendant, and the defendant's girlfriend subsequently comes to court and pays the necessary fine. 1997 Miss. Op. Att'y Gen. 501.

Subsection (1)(f) applies only to criminal cases in which the prosecution fails to secure a conviction; however, whether any amount is paid under the section is purely discretionary with the board. 1998 Miss. Op. Att'y Gen. 536.

The clerk of the court collects the $25.00 fee for services in connection with the issuance of a peace bond as allowed by the statute; the clerk also collects $25.00 in order to pay a constable for service of the warrant as allowed by the statute, although the constable's fee is collected only after the court has conducted a hearing on the matter and determined, consistent with fact, that grounds exist for the issuance of a warrant. 1998 Miss. Op. Att'y Gen. 588.

A written order from the court would be sufficient to appoint an individual to serve as justice court bailiff; however, there is no statute that would require the county board of supervisors to pay the individual who is serving as bailiff unless that person is a constable. 1998 Miss. Op. Att'y Gen. 738.

A constable is not entitled to a fee for a diligent attempt to serve process if the constable is unable to serve the process even where the information provided to the constable is erroneous; if the plaintiff provides additional correct information for the process to be served and the constable successfully serves the process, an additional $15.00 should be collected from the plaintiff for the service of the process; the constable would then be entitled to $40.00 ($25.00 original fee plus $15.00 additional fee) for service of the process. 2000 Miss. Op. Att'y Gen. 219.

A constable may claim mileage for the actual mileage incurred when transporting a prisoner to the jail; the only mileage that may be claimed by the constable is the distance from the location of the arrest to the jail when the constable actually transports the prisoner to the jail, and a constable may not claim mileage if he "field releases" a prisoner and does not convey that prisoner to jail. 2001 Miss. Op. Att'y Gen. 143.

A constable is not entitled to collect a fee unless the process is actually served; therefore, if a constable tries to serve a summons for unpaid taxes on a mobile home but the mobile home or trailer has been moved and the process cannot be served, the constable has not earned a fee. 2002 Miss. Op. Att'y Gen. 531.

If a civil plaintiff supplies an address for a defendant that turns out to be incorrect, and the constable returns the process marked "not found" or "wrong address", the constable has not earned a fee. 2002 Miss. Op. Att'y Gen. 531.

The 1999 amendment to subsection (1)(a) of this section supplements MS AG Op., Hairston (March 24, 1987) and MS AG Op., Gex (July 16, 1992) to provide that a constable may earn an additional $ 15.00 when a plaintiff provides erroneous information for service of process and the constable makes a diligent search but is unable to serve the process at the original address provided, but actually does serve the process at a correct address that is later provided by the plaintiff; the service of process fees (the original $ 25.00 fee plus the additional $ 15.00 fee) should only be paid to the constable upon a successful service of process by the constable. 2002 Miss. Op. Att'y Gen. 531.

If a justice court judge issues a warrant to the county to pay a constable for service as a bailiff as provided for by Section 25-7-27(1)(e), the county is obligated to pay it. 2002 Miss. Op. Att'y Gen. 635.

If a justice court judge issues a warrant to the county to pay a constable for service as a bailiff as provided by subdivision (1)(e) of this section, the county is obligated to pay it. 2004 Miss. Op. Att'y Gen. 169.

This section allows a constable to be paid by the county for serving as a bailiff in civil cases if the judge issues a pay warrant for such service. The judge should issue the warrant for the county to pay the constable for service as a bailiff. The warrant should be presented to the county to be put on the claims docket to be approved by the board of supervisors. The per diem set forth in § 25-3-69 is $ 40.00. 2004 Miss. Op. Att'y Gen. 316.

If multiple charges in an arrest warrant are treated as one case, then the constable would be entitled to one fee for the execution thereof.. However, if the charges are treated as separate cases, then the constable would be entitled to a separate fee for each case even if he only served one warrant. 2004 Miss. Op. Att'y Gen. 316.

A constable is entitled to his fees from the first proceeds received by the court on each case. If the court applies the payments to one case until it is fully paid prior to crediting payments toward the second case, the constable would not be entitled to receive his fee on the second case until all fees have been collected on the first case. However, a court has the authority to apply the payments received from the defendant toward both cases in equal amounts. In such a case, the constable would be entitled to receive his fees for both cases first. 2004 Miss. Op. Att'y Gen. 316.

A constable is entitled to his fee if he serves process in a civil case filed by the county to collect a delinquent payment even if the defendant is unable to pay the delinquent bill. 2004 Miss. Op. Att'y Gen. 316.

A constable is not entitled to receive an additional fee for arresting a subject on a contempt warrant if the constable is the officer that arrested the subject for the underlying offense. 2004 Miss. Op. Att'y Gen. 316.

There is no provision that allows a constable to collect expenses associated with returning a defendant to jail after the constable previously arrested the defendant and released him on a recognizance bond. 2004 Miss. Op. Att'y Gen. 316.

If a defendant fails to appear for his court date after being released on his own recognizance by the constable who arrested him, the court may issue a warrant for failure to appear. The constable may then arrest the defendant and bring him to the jail and he would then be entitled to a mileage reimbursement as established under § 25-3-41(2). 2004 Miss. Op. Att'y Gen. 316.

In order to collect the annual state fail case fee the constable must serve or diligently attempt to serve all warrants and other process presented to him for service in state cases in which the state fails in the prosecution. He must attend all trials in state cases in which the state fails in the prosecution, unless lawfully excused or otherwise unavailable for a legitimate reason. Finally, he must not have overcharged in the collection of fees for costs. 2005 Miss. Op. Att'y Gen. 4.

If the constable performs all the requirements for collection of the annual state fail case fee, the board of supervisors has no discretion, and must pay the fee. 2005 Miss. Op. Att'y Gen. 4.

Since the annual state fail case fee is $ 1,800.00 or nothing, a breakdown or "itemization" is not required. 2005 Miss. Op. Att'y Gen. 4.

A constable should receive his fee before restitution is paid to the victim. 2005 Miss. Op. Att'y Gen. 63.

Funds generated from assessment of traffic fines can be expended only for the DARE program or a similar program. 2006 Miss. Op. Att'y Gen. 72.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur., Sheriffs, Police, and Constables §§ 68, 74, 75, 78, 83.

§ 25-7-29. Notaries public.

Notaries public may charge a fee in an amount of not less than Two Dollars ($2.00) nor more than Five Dollars ($5.00) for services rendered, including the performance of any of the following duties:

(a) Protesting bill or note for nonacceptance or nonpayment, and giving notice;
(b) Registering such protest and making record;
(c) Attesting letters of attorney and seal;
(d) Notarial affidavit to an account or other writing and seal;
(e) Each oath or affirmation and seal;
(f) Notarial procuration and seal;
(g) Certifying sales at auction and seal;
(h) Taking proof of debts to be sent abroad;
(i) Protest in insurance cases and seal;
(j) Copy of record and affidavit; or
(k) Absentee ballot applications and ballots.

HISTORY:
Codes, 1880, § 451; 1892, § 2007; 1906, § 2183; Hemingway's 1917, § 1864; 1930, § 1794; 1942, § 3942; Laws, 1996, ch. 432, § 1; Laws, 1998, ch. 411, § 1, eff from and after July 1, 1998.

Cross References —
Fee for officer taking proof or acknowledgment of writing, see § 25-7-33.

Fee for administering and certifying oath or affidavit, see § 25-7-45.

Appointment and bond of notaries public, duties and authority of notaries public, see §§ 25-33-1 et seq.

RESEARCH REFERENCES

Am. Jur.
58 Am. Jur. 2d, Notaries Public §§ 22 et seq.

§ 25-7-31. Officers taking depositions.

Officers taking depositions shall charge the following fees:

(a) For administering oath, and certificate of the same .... $ .50

(b) For writing or copying the deposition, if required to do so, for each hundred words .... .10

HISTORY:
Codes, 1880, § 455; 1892, § 2010; 1906, § 2186; Hemingway's 1917, § 1867, 1930, § 1796; 1942, § 3944.

RESEARCH REFERENCES

Am. Jur.
58 Am. Jur. 2d, Notaries Public §§ 22 et seq.

§ 25-7-33. Officers taking acknowledgments.

For taking proof or acknowledgment of any writing concerning real or personal estate, and certificate thereof for each party, the same fee to all officers for the same service .... $ .25

HISTORY:
Codes, 1880, § 450; 1892, § 2011; 1906, § 2187; Hemingway's 1917, § 1868; 1930, § 1797; 1942, § 3945.

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. 2003 Miss. Op. Att'y Gen. 112.

RESEARCH REFERENCES

Am. Jur.
58 Am. Jur. 2d, Notaries Public §§ 22 et seq.

§ 25-7-35. Commissioners, referees, auditors, and arbitrators.

The court in which the cause is pending, or the chancellor or judge thereof in vacation, shall fix and allow reasonable compensation for commissioners, referees, auditors, and arbitrators; and such compensation shall be taxed and collected as costs in the suit.

HISTORY:
Codes, 1880, §§ 453, 456; 1892, §§ 2009, 2012; 1906, §§ 2185, 2188; Hemingway's 1917, §§ 1866, 1869; 1930, §§ 1795, 1798; 1942, §§ 3943, 3946; Laws, 1958, chs. 325, 328, 334, 337, 338, 344, 354; Laws, 1960, ch. 225, §§ 2, 3,

eff July 1, 1960.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Arbitration and award, generally, see §§ 11-15-1 et seq.

Taxation and collection of costs in arbitration proceedings, see § 11-15-33.

Fees and expenses in arbitration proceedings based on controversies arising out of construction contracts and related agreements, see § 11-15-121.

Authority of officers to administer oaths, see § 25-7-45.

JUDICIAL DECISIONS

1. In general.

Commissioner who fails under decrees is entitled to like fees as sheriff for sales under execution under the laws in force at time of sale. Walker v. Walker, 221 Miss. 225, 72 So. 2d 243, 1954 Miss. LEXIS 530 (Miss. 1954).

Code of 1906, §§ 2176, 2185, do not limit compensation of commissioners making sales to a per centum of actual money paid into sheriff's hands, but to the amount realized under the sale. Powell v. Davis, 119 Miss. 175, 80 So. 556, 1918 Miss. LEXIS 27 (Miss. 1918).

RESEARCH REFERENCES

ALR.

Liability of parties to arbitration for costs, fees, and expenses. 57 A.L.R.3d 633.

Am. Jur.

20 Am. Jur. 2d, Courts §§ 6, 95.

§ 25-7-37. County surveyors.

The fees charged by a county surveyor shall be those fees agreed to between the county surveyor and the party engaging his or her services.

HISTORY:

Codes, 1880, § 457; 1892, § 2013; 1906, § 2189; Hemingway's 1917, § 1870; 1930, § 1799; 1942, § 3947; Laws, 1920, ch. 130; Laws, 1950, ch. 235; Laws, 2016, ch. 366, § 1, eff from and after July 1, 2016.

Cross References —

Oath and bond required of county surveyors, see § 19-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

Where county surveyor has surveyed a plantation and divided it into 60 small tracts, making a separate plat of each tract, his charge for making a map of the plantation containing a plat of each tract is not limited to $2.50. Swoope v. Moody, 73 Miss. 82, 18 So. 799, 1895 Miss. LEXIS 101 (Miss. 1895).

§ 25-7-39. Payment of surveyor fees.

The fees chargeable by the surveyor shall be paid by the parties engaging his services. When the services are rendered in obedience to an order of court in a suit therein pending, the surveyor shall state an account of the fees for services, written on the back of one (1) of the plats by him returned to the court, and the same shall be allowed in the bill of costs and taxed as other costs.

HISTORY:
Codes, 1880, § 458; 1892, § 2014; 1906, § 2190; Hemingway's 1917, § 1871; 1930, § 1800; 1942, § 3948; brought forward and amended, Laws, 2016, ch. 366, § 2, eff from and after July 1, 2016.

Cross References —
Duties of county surveyors, generally, see §§ 19-27-1 et seq.

RESEARCH REFERENCES

CJS.
20 C.J.S., Counties §§ 208-210.

§ 25-7-41. Rangers.

Rangers shall be entitled to the following fees:

(a) For taking the information of the taker up of animal, and issuing summons for appraisers .... $ .50

(b) For registering the certificate .... .50

(c) Advertising estray 1.00

(d) For making sale .... .50

(e) And ten per centum commissions on the amount of sales.

(f) For taking proof of title, and order for delivery of estray to the owner .... .50

(g) And there shall be allowed to the taker up the sum of five dollars and his necessary expenses for keeping the estray; but if two or more estrays of the same species are taken up by the same person at the same time, they shall be included in one information, registry, and advertisement, and fees shall be allowed to the ranger and taker up as for only one; and when an estray shall be valued at more than Twenty Dollars ($20.00), an allowance shall not be made to the taker up, except the sum of Five Dollars ($5.00) herein allowed for taking up the estray, until the same shall be approved by the board of supervisors, and in no case shall the taker up receive more than half of the proceeds of sale.

And allowance shall not be made to the taker up for keeping the estray when the use of the same is equal to the expense of keeping.

(h) For appraising estrays, to each appraiser .... .50

HISTORY:
Codes, 1880, § 459; 1892, § 2015; 1906, § 2191; Hemingway's 1917, § 1872; 1930, § 1801; 1942, § 3949.

Cross References —
Duties of rangers as to estrays, see §§ 69-13-301 et seq.

Authority of ranger to administer oaths, see § 69-13-327.

§ 25-7-43. Fees for approving bond of county officer.

The president of the board of supervisors, or other officer approving the bond of any officer, shall be entitled to a fee of One Dollar ($1.00) for each bond; and where two (2) officers are engaged in approving such bond, they shall be entitled to share such fee equally. All bonds required by law to be made by assessors, chancery clerks, circuit clerks, sheriffs, tax collectors, county superintendents of education, and members of the board of supervisors shall be made in a surety company authorized to do business in this state, and the premiums thereon shall be paid out of the treasuries of the respective counties; but the fees for the approval of same shall be paid by the officer, as in other bonds.

HISTORY:
Codes, 1880, § 467; 1892, § 2022; 1906, § 2198; Hemingway's 1917, § 1883; 1930, § 1802; 1942, § 3950; Laws, 1922, ch. 163; Laws, 1924, ch. 206; Laws, 1926, ch. 296.

Cross References —
How bonds of county and beat officers approved, see § 25-1-19.

Validity of informal officers' bonds, see § 25-1-41.

Penalty for approving worthless official bond, see § 97-11-9.

RESEARCH REFERENCES

CJS.
20 C.J.S., Counties §§ 411, 414.

§ 25-7-45. All officers administering oaths.

For administering and certifying an oath or affidavit .... $ .25

HISTORY:
Codes, 1892, § 2027; 1906, § 2205; Hemingway's 1917, § 1890; 1930, § 1803; 1942, § 3951.

Cross References —
Fees of notaries public, see § 25-7-29.

Fees to officers taking depositions, see § 25-7-31.

Fees to officers taking acknowledgments, see § 25-7-33.

OPINIONS OF THE ATTORNEY GENERAL

Fee for administering and certifying oath or affidavit should not be collected on civil cases. 1993 Miss. Op. Att'y Gen. 710.

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. 2003 Miss. Op. Att'y Gen. 112.

§ 25-7-47. Witness fees.

Witnesses in the county, circuit, chancery and justice courts shall receive the same pay per day as is set by the board of supervisors under Section 25-7-61 for service as a juror plus mileage as authorized under Section 25-3-41 for each mile going to and returning from the courthouse to their homes by the nearest route, and such tolls and ferriages as they may actually be obliged to pay; but a charge shall not be made for mileage except that traveled in this state. Witnesses in all other cases shall receive the same compensation as they receive before the circuit court. It shall not be necessary to issue subpoenas for police officers as witnesses in city cases of cities having a population of more than ten thousand (10,000) according to the federal census of 1930; and officers, when used as witnesses in cases, are not to be allowed witness fees. A law enforcement officer who has retired or otherwise ceased employment as a law enforcement officer but who is required to testify in any case based on matters that arose during the course of the officer's employment shall be entitled to the same compensation and expenses from the former employing law enforcement agency as an officer on active duty under the same circumstances.

HISTORY:

Codes, 1880, § 1595; 1892, § 2023; 1906, § 2199; Hemingway's 1917, § 1884; 1930, § 1805; 1942, § 3953; Laws, 1936, ch. 249; Laws, 2005, ch. 385, § 1; Laws, 2014, ch. 374, § 1, eff from and after July 1, 2014.

Editor's Notes —

Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References —

Compensation of witnesses in arbitration proceedings, see § 11-15-117.

Attendance allowance for officers in quo warranto proceedings, see § 11-39-59.

Compensation of witness in habeas corpus proceedings, see § 11-43-51.

Compensation of attorney as witness, see § 11-49-5.

Fees not being payable until bill produced, see § 11-53-67.

Subpoenas for witnesses, generally, see §§ 13-3-93 et seq., 99-9-11 et seq.

Compensation of physician performing autopsy subpoenaed as witness in criminal case, see § 41-37-21.

Compensation of witnesses in proceeding to deny, suspend or revoke license for ambulatory surgical facility, see § 41-73-11.

Fees and mileage allowed under this section applicable to witnesses appearing pursuant to subpoena before State Board of Contractors in proceedings against residential builders and remodelers, see § 73-59-13.

Compensation of witnesses before railroad commission, see § 77-1-37.

Witness fees, see Miss. R. Civ. P. 45.

JUDICIAL DECISIONS

1. In general.

Prevailing party was not entitled to recover witness fees where certificate of allowance was not issued by clerk or demanded by witness during term of court or within five days thereafter notwithstanding witness made proper affidavit before clerk. Woodruff v. Bright, 175 Miss. 109, 166 So. 390, 1936 Miss. LEXIS 24 (Miss. 1936).

Although Miss. R. Civ. P. 68 applied because the jury's award was less than the defendant's rejected offer of settlement, costs were limited to those allowable under Miss. R. Civ. P. 54(d) and, therefore, the plaintiff could not be taxed with costs for copying, trial materials, and court reporter fees, or for expert witnesses costs in excess of Miss. Code Ann. § 25-7-47. Hubbard v. Delta Sanitation of Miss., 64 So. 3d 547, 2011 Miss. App. LEXIS 240 (Miss. Ct. App. 2011).

OPINIONS OF THE ATTORNEY GENERAL

Section 25-7-47 addresses witness fees which would be applicable to former police officers who no longer live in the county or district. 1995 Miss. Op. Att'y Gen. 265.

RESEARCH REFERENCES

ALR.

Power of court which appoints or employs expert witnesses to tax their fees as costs. 39 A.L.R.2d 1376.

Contingent fee informant testimony in state prosecutions. 57 A.L.R.4th 643.

Am. Jur.

81 Am. Jur. 2d, Witnesses §§ 23 et seq.

CJS.

98 C.J.S., Witnesses §§ 70-86.

Practice References.
Young, Trial Handbook for Mississippi Lawyers § 11:8.

§ 25-7-49. Law enforcement officers to receive no witness fees in criminal cases.

It shall be unlawful for any sheriff, deputy sheriff, constable, police officer, marshal, county patrolman, or any other state, county, or municipal peace or law enforcement officer to receive any fee as a witness in any criminal case in this state. The provisions of this section shall apply only when such officers are witnesses in the county or district in which such officer is serving.

Any person who shall violate the provisions of this law shall, upon conviction, be punished by a fine of not more than One Hundred Dollars ($100.00).

HISTORY:
Codes, 1942, § 3953-01; Laws, 1944, ch. 321, §§ 1, 2.

Cross References —
Witness fees, generally, see § 25-7-47.

Prohibition against payment of witness fee to member of highway patrol, see § 45-3-21.

Witness fees, see Miss. R. Civ. P. 45.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-7-49 only applies to individuals who are currently serving as a law enforcement officer in the county or district. Thus, it does not apply to former police officers who have moved out of the county or district. 1995 Miss. Op. Att'y Gen. 265.

RESEARCH REFERENCES

CJS.
80 C.J.S., Sheriffs and Constables §§ 459, 460.

98 C.J.S., Witnesses §§ 73-75.

§ 25-7-51. Certificates for witness fees in civil cases.

The fees to which a witness may be entitled in a civil case shall be allowed on the affidavit of the witness, stating the number of days he has attended and the amount of mileage, toll, and ferriage to which he is entitled, to be taken and preserved by the clerk of the court, master, or other officer before whom the witness was called to testify; and a certificate of the allowance shall be given to the witness. A witness shall be entitled to demand, at the expiration of each day, his compensation for attending on that day; and if the same be not paid, the witness shall not be obliged to attend further until the compensation for his previous attendance shall be paid, unless the party liable make and file an affidavit of his inability to pay. The party paying a witness attending on his behalf may file the certificate of the witness among the papers in the cause and, if he recover costs therein, the amount shall be taxed in the bill of costs. Any witness may sue for and recover from the party on whose behalf he was summoned the amount specified in his certificate. Where a witness holds a certificate and the same has been duly entered on the witness docket, it may be taxed and collected as other costs.

HISTORY:
Codes, 1906, § 2200; Hemingway's 1917, § 1885; 1930, § 1806; 1942, § 3954.

Cross References —
Fees not being payable until bill produced, see § 11-53-67.

Witness fees, generally, see § 25-7-47.

Witness fees, see Miss. Civ. P. 45.

JUDICIAL DECISIONS

1. In general.

Prevailing party held not entitled to recover witness fees, where witnesses merely appeared before clerk and furnished statement of number of days they had attended court and amount of mileage to which they were entitled, but made no affidavit to such facts and no certificates of attendance were issued by clerk during term of court or within five days thereafter. Green v. Myrick, 177 Miss. 778, 171 So. 774, 1937 Miss. LEXIS 150 (Miss. 1937).

Prevailing party held not entitled to recover witness fees where certificate of allowance was not issued by clerk or demanded by witness during term of court or within five days thereafter; although witness made proper affidavit before clerk. Woodruff v. Bright, 175 Miss. 109, 166 So. 390, 1936 Miss. LEXIS 24 (Miss. 1936).

Where witnesses made no affidavit as to their attendance and mileage their fees could not be taxed as costs. Cohn v. Woods, 105 Miss. 716, 63 So. 221, 1913 Miss. LEXIS 255 (Miss. 1913).

Where witnesses never proved their attendance and no certificate had been issued to them, their fees for mileage were not taxable as costs. Hubbard v. Hemphill, 94 Miss. 388, 47 So. 657, 1908 Miss. LEXIS 20 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Allowance, as taxable costs, of witness fees and mileage of stockholders, directors, officers, and employees of corporate litigant. 57 A.L.R.2d 1243.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Am. Jur.
81 Am. Jur. 2d, Witnesses §§ 23 et seq.

CJS.
98 C.J.S., Witnesses §§ 70-86.

Practice References.
Young, Trial Handbook for Mississippi Lawyers § 11:8.

§ 25-7-53. Forfeiture of witness fees.

A witness shall not be entitled to charge for his attendance in a civil case at any term of the court unless he shall, during the term or within five (5) days thereafter, prove his attendance and obtain a certificate in the manner directed; nor in any case, civil or criminal, shall a witness who does not appear in court when called, or who is so intoxicated as to be disqualified from testifying, be entitled to receive compensation.

HISTORY:
Codes, 1880, § 1597; 1892, § 2024; 1906, § 2201; Hemingway's 1917, § 1886; 1930, § 1807; 1942, § 3955.

Cross References —
Witness fees, generally, see § 25-7-47.

Witness fees, see Miss. R. Civ. P. 45.

JUDICIAL DECISIONS

1. In general.

Prevailing party held not entitled to recover witness fees, where witnesses merely appeared before clerk and furnished statement of number of days they had attended court and amount of mileage to which they were entitled, but made no affidavit to such facts and no certificates of attendance were issued by clerk during term of court or within five days thereafter. Green v. Myrick, 177 Miss. 778, 171 So. 774, 1937 Miss. LEXIS 150 (Miss. 1937).

Order of court attempting to authorize affidavits to be made and certificates issued for fees for witnesses for attendance at former terms of court was ineffective under this section. Green v. Myrick, 177 Miss. 778, 171 So. 774, 1937 Miss. LEXIS 150 (Miss. 1937).

Prevailing party held not entitled to recover witness fees where certificate of allowance was not issued by clerk or demanded by witness during term of court or within five days thereafter; although witness made proper affidavit before clerk. Woodruff v. Bright, 175 Miss. 109, 166 So. 390, 1936 Miss. LEXIS 24 (Miss. 1936).

Where witnesses failed to make affidavit as to their attendance and mileage their fees could not be taxed as costs. Cohn v. Woods, 105 Miss. 716, 63 So. 221, 1913 Miss. LEXIS 255 (Miss. 1913).

The plain declaration of the law is that only the fees prescribed by the statute shall be allowed. The attendance meant by the statute, clearly, is attendance upon the court when in session. Marshall County v. Tidmore, 74 Miss. 317, 21 So. 51, 1896 Miss. LEXIS 149 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.
81 Am. Jur. 2d, Witnesses §§ 23 et seq.

CJS.
98 C.J.S., Witnesses § 81.

§ 25-7-55. Witness to have only one fee for same time.

A witness shall not be allowed compensation for his attendance in more than one case or on more than one side of the same case at the same time, but he may elect in which of several cases and on which side of a case in which he is summoned for both sides, to claim his attendance. The party who pays a witness shall be entitled to recover of the parties in other cases who were liable to such witness a just proportion of the amount to which the witness was entitled for his attendance as the witness of such parties during the same time; and a person who is compelled to attend court on other business shall not be paid as a witness.

HISTORY:
Codes, 1880, § 1598; 1892, § 2025; 1906, § 2202; Hemingway's 1917, § 1887; 1930, § 1808; 1942, § 3956.

Cross References —
Fee not being payable until bill produced, see § 11-53-67.
Witness fees, generally, see § 25-7-47.
Witness fees, see Miss. R. Civ. P. 45.

RESEARCH REFERENCES

Am. Jur.
81 Am. Jur. 2d, Witnesses §§ 23 et seq.

CJS.
98 C.J.S., Witnesses § 81.

§ 25-7-57. Witness in criminal cases.

Witnesses in criminal cases shall be allowed the same compensation as in civil cases, but the prosecutor shall not be allowed compensation as a witness, nor shall any person be allowed for his attendance as a witness in more than one criminal case on the same day. The compensation of witnesses on behalf of the state shall be allowed in open court, the order therefor entered upon the minutes, and a certificate of same shall be delivered to the party entitled thereto. Said certificate shall be negotiable and shall be paid by the county treasurer of the county in which the offense was committed upon presentation by the payee or the holder in due course. The clerk shall keep an account of all such certificates and shall tax the amount thereof in the bill of costs if the defendant shall be sentenced to pay the costs and, when collected, the same shall be paid into the county treasury. A witness shall not receive compensation for attendance before the grand jury.

HISTORY:

Codes, 1880, § 1596; 1892, § 2026; 1906, § 2203; Hemingway's 1917, § 1888; 1930, § 1809; 1942, § 3957; Laws, 1962, ch. 382, § 1, eff from and after passage (approved June 1, 1962).

Cross References —

Witness fees, generally, see § 25-7-47.

Applicability of fees provided in this section to witnesses before military courts, see § 33-13-621.

Compensation of physician performing autopsy subpoenaed as witness in criminal case, see § 41-37-21.

Witness fees, see Miss. R. Civ. P. 45.

JUDICIAL DECISIONS

1. In general.

A witness for the state in a criminal prosecution who has been committed to jail to secure his appearance before the circuit court is not entitled to a per diem allowance for fees for the whole period of his detention, but only for that covered by his attendance upon the court when in sesssion. Marshall County v. Tidmore, 74 Miss. 317, 21 So. 51, 1896 Miss. LEXIS 149 (Miss. 1896).

RESEARCH REFERENCES

ALR.

Allowance, as taxable costs, of witness fees and mileage of stockholders, directors, officers, and employees of corporate litigant. 57 A.L.R.2d 1243.

Contingent fee informant testimony in state prosecutions. 57 A.L.R.4th 643.

Am. Jur.

81 Am. Jur. 2d, Witnesses §§ 23 et seq.

CJS.

98 C.J.S., Witnesses §§ 70-86.

§ 25-7-59. Report of witness certificates payable out of county treasury.

The circuit clerk shall, within thirty (30) days after the adjournment of each term of the circuit court, make a report in writing to the county auditor of all witness certificates issued by him, payable out of the county treasury, which report shall state the name of each witness, the case, the date, and the amount of each certificate. Said report shall be certified by him under his official seal, and the county auditor shall enter the same upon the proper record in his office.

HISTORY:
Codes, 1906, § 2204; Hemingway's 1917, § 1889; 1930, § 1810; 1942, § 3958.

Cross References —
Fees not being payable until bill produced, see § 11-53-67.

Witness fees, generally, see § 25-7-47.

Witness fees, see Miss. R. Civ. P. 45.

RESEARCH REFERENCES

Am. Jur.
81 Am. Jur. 2d, Witnesses §§ 23 et seq.

CJS.
20 C.J.S., Counties §§ 208-210.
98 C.J.S., Witnesses § 81.

§ 25-7-61. Jurors; Lengthy Trial Fund.

[Effective until January 1, 2008, or such time as the Lengthy Trial Fund is fully funded by a specific appropriation of the Legislature, whichever is later, this section shall read as follows:]

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars ($25.00) per day and not to be greater than Forty Dollars ($40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial.

No grand juror shall receive any compensation except mileage unless he has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless he has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars ($5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars ($10.00) per day and not more than Fifteen Dollars ($15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees

returned to the county may be earmarked for a particular purpose to be selected by the juror, including:

(a) The local public library;
(b) Local law enforcement;
(c) The Mississippi Burn Care Fund created in Section 7-9-70; or
(d) Any other governmental agency.

[From and after January 1, 2008, or such time as the Lengthy Trial Fund is fully funded by a specific appropriation of the Legislature, whichever is later, this section shall read as follows:]

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars ($25.00) per day and not to be greater than Forty Dollars ($40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in the charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial.

No grand juror shall receive any compensation except mileage unless the juror has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless the juror has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars ($5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars ($10.00) per day and not more than Fifteen Dollars ($15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees returned to the county may be earmarked for a particular purpose to be selected by the juror, including:

(a) The local public library;
(b) Local law enforcement;
(c) The Mississippi Burn Care Fund created in Section 7-9-70; or
(d) Any other governmental agency.

(3) The Administrative Office of Courts shall promulgate rules to establish a Lengthy Trial Fund to be used to provide full or partial wage replace-

ment or wage supplementation to jurors who serve as petit jurors in civil cases for more than ten (10) days.

(a) The Uniform Circuit and County Court Rules shall provide for the following:

(i) The selection and appointment of an administrator for the fund.

(ii) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel.

(iii) Procedures for the accounting, auditing and investment of money in the Lengthy Trial Fund.

(iv) A report by the Administrative Office of Courts on the administration of the Lengthy Trial Fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

(v) The Lengthy Trial Fund Administrator and all other necessary personnel shall be employees of the Administrative Office of Courts.

(b) The administrator shall use any monies deposited in the Lengthy Trial Fund to pay full or partial wage replacement or supplementation to jurors whose employers pay less than full regular wages when the period of jury service lasts more than ten (10) days.

(c) To the extent funds are available in the Lengthy Trial Fund, and in accordance with any rules or regulations promulgated by the Administrative Office of Courts, the court may pay replacement or supplemental wages out of the Lengthy Trial Fund not to exceed Three Hundred Dollars ($300.00) per day per juror beginning on the eleventh day of jury service. In addition, for any jurors who qualify for payment by virtue of having served on a jury for more than ten (10) days, the court, upon finding that the service posed a significant financial hardship to a juror, even in light of payments made with respect to jury service after the tenth day, may award replacement or supplemental wages out of the Lengthy Trial Fund not to exceed One Hundred Dollars ($100.00) per day from the fourth to the tenth day of jury service.

(d) Any juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund, provided the service began on or after January 1, 2008, may submit a request for payment from the Lengthy Trial Fund on a form that the administrator provides. Payment shall be limited to the difference between the jury fee specified in subsection (1) of this section and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period.

(i) The form shall disclose the juror's regular wages, the amount the employer will pay during the term of jury service starting on the eleventh day and thereafter, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.

(ii) The juror also shall be required to submit verification from the employer as to the wage information provided to the administrator, for example, the employee's most recent earnings statement or similar document, before initiation of payment from the fund.

(iii) If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to his or her approximate gross weekly income, together with such other information as the administrator may require, in order to verify weekly income.

(4) Nothing in this section shall be construed to impose an obligation on any county to place monies in the Lengthy Trial Fund or to pay replacement or supplemental wages to any juror from county funds.

HISTORY:

Codes, 1880, § 454; 1892, § 2028; 1906, § 2207; Hemingway's 1917, § 1892; 1930, § 1811; 1942 § 3959; Laws, 1920, ch. 143; Laws, 1932, ch. 192; Laws, 1936, ch. 248; Laws, 1946, ch. 180; Laws, 1958, ch. 324, § 2; Laws, 1962, ch. 383; Laws, 1964, ch. 365, § 1; Laws, 1974, ch. 420; Laws, 1975, ch. 367; Laws, 1986, ch. 459, § 32; Laws, 1989, ch. 345, § 1; Laws, 1989, ch. 395, § 2; Laws, 1994, ch. 643, § 2; Laws, 2004, 1st Ex Sess, ch. 1, § 12; Laws, 2006, ch. 437, § 7; Laws, 2007, ch. 433, § 5; Laws, 2008, ch. 442, § 11; Laws, 2010, ch. 476, § 7, eff from and after passage (approved Apr. 1, 2010).

Editor's Notes —

The United States Attorney General, by letter dated May 15, 1995, determined that the amendment to this section by Laws of 1994, ch. 643, § 2, did not affect voting and, therefore, was not subject to the preclearance requirement of Section 5 of the Voting Rights Act of 1965.

Cross References —

Attendance allowance for officers in quo warranto proceedings, see § 11-39-59.

Selection and qualifications of jurors, see §§ 13-5-1 et seq.

Exclusion of jury duty pay from computation of weekly unemployment benefits, see § 71-5-505.

JUDICIAL DECISIONS

1. In general.

The remark of a trial judge that the jury would receive their noon meal at the county's expense, did no more than announce the law of the state on this question and could not have been prejudicial to the defendant. Clark v. State, 209 Miss. 586, 48 So. 2d 127, 1950 Miss. LEXIS 417 (Miss. 1950).

Principal and surety on injunction bond given in suit to restrain eminent domain proceeding held not liable for damages consisting of fees paid jurors, who neither attended nor served. Gwin v. Greenwood, 159 Miss. 110, 131 So. 821, 1931 Miss. LEXIS 18 (Miss. 1931).

OPINIONS OF THE ATTORNEY GENERAL

Justice Court Judge may require convicted criminal defendant to pay court cost, i.e. jury cost, as set forth in statute. 1990 Miss. Op. Att'y Gen. 180.

Any expenses incurred by members of a grand jury are covered by the fees paid pursuant to Section 25-7-61. Furthermore, no authority exists that would allow for a professional, such as a CPA or investigator, to provide assistance to a grand jury other than as a witness. 1996 Miss. Op. Att'y Gen. 173.

RESEARCH REFERENCES

ALR.

Power of court which appoints or employs expert witnesses to tax their fees as costs. 39 A.L.R.2d 1376.

Am. Jur.

47 Am. Jur. 2d, Jury § 93.

CJS.

50A C.J.S., Juries § 194.

§ 25-7-63. Determination of compensation of jurors.

The amount of compensation due to each grand juror, petit juror, and juror summoned on a special venire and regularly discharged by the court shall, after the discharge of such juror, be determined on the oath of the juror, allowed in open court, and entered on the minutes thereof. The clerk shall thereupon give a certificate of the same to the juror, and said certificate shall be negotiable and shall be paid by the county treasurer upon presentation by the payee or the holder in due course. In all other cases the court or officer before whom the juror serves shall determine the sum due and give certificate accordingly.

HISTORY:

Codes, 1880, § 1698; 1892, § 2029; 1906, § 2209; Hemingway's 1917, § 1893; 1930, § 1812; 1942, § 3960; Laws, 1962, ch. 382, § 2, eff from and after passage (approved June 1, 1962).

Cross References —

Selection and qualifications of jurors, generally, see §§ 13-5-1 et seq.

Exclusion of jury duty pay from computation of weekly unemployment benefits, see § 71-5-505.

JUDICIAL DECISIONS

1. In general.

Principal and surety on injunction bond given in suit to restrain eminent domain proceeding held not liable for damages consisting of fees paid jurors, who neither attended nor served. Gwin v. Greenwood, 159 Miss. 110, 131 So. 821, 1931 Miss. LEXIS 18 (Miss. 1931).

OPINIONS OF THE ATTORNEY GENERAL

Jury costs may be assessed against a defendant that is convicted; based on this section, jurors summoned for justice court jury duty are entitled to the per diem established by statute only if they are chosen for the jury or as alternates. Jurors are only entitled to the authorized per diem and not a per diem plus meals. 2003 Miss. Op. Att'y Gen. 260.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury § 93.

CJS.

50A C.J.S., Juries § 194.

§ 25-7-65. Printers and publishers.

Printers and publishers shall be entitled to the following fees:

(a) For publishing in a newspaper any summons, order, citation, advertisement or notice required by law to be published in a newspaper, Twelve Cents (12¢) for each word it contains for the first insertion, and Ten Cents (10¢) for each of the words for each subsequent insertion required by law; however, as an alternative, such printers and publishers may charge such fees per line which are acceptable to the party placing the publication not to exceed the Twelve Cents (12¢) and Ten Cents (10¢) per word as set out in this subsection.

When four (4) or more numerals appear consecutively in any such legal publication, four (4) numerals shall be considered as one (1) word, and if there remains a fractional portion of such unit of four (4) numerals therein such fraction shall also be counted as one (1) word. In the case of numbers containing less than four (4) numerals which are isolated from other numerals by words in such publication, the same shall be counted as one (1) word. When tables or tabular matter are included, each line of the standard newspaper column shall be considered as containing at least six (6) words.

The fees authorized in this paragraph (a) shall not be chargeable for any erroneous publication of a summons, order, citation, advertisement or notice required by law to be published in a newspaper, if such error is not attributable to the person or entity requesting the publication.

(b) For making proof of publication, making a copy thereof, and for deposing to the same, Three Dollars ($3.00); but this section shall not apply to the publication of ordinances of municipalities, proceedings of the board of supervisors and school boards or audit reports.

HISTORY:

Codes, 1880, §§ 461, 1638; 1892, § 2030; 1906, § 2209; Hemingway's 1917, § 1894; 1930, § 1813; 1942, § 3961; Laws, 1920, ch. 305; Laws, 1944, ch. 320, § 2; Laws, 1948, ch. 428; Laws, 1958, ch. 331; Laws, 1972, ch. 401, § 1; Laws, 1983, ch. 520; Laws, 1987, ch. 474; Laws, 1998, ch. 586, § 1, eff from and after July 1, 1998.

Cross References —

Publication of proceedings of county boards of supervisors, see §§ 19-3-33 and 19-3-35.

Newspaper publication of municipal ordinances, see § 21-13-11.

JUDICIAL DECISIONS

1. In general.

Where two newspapers submitted bids of $15 and $25 per month, respectively, for the publication of the proceedings of a board of supervisors, the board could not award the contract to the newspaper making the $25 bid, on the theory that a stipulation in its bid that it would charge the legal rate for the publication in case the minutes of the board did not amount to $25 as computed by the legal rate might render the amount to be paid less than that stipulated in the other bid, since the law inserted a stipulation to the same effect in the bid of the other newspaper. Klyce v. Alcorn County, 192 Miss. 440, 6 So. 2d 298, 1942 Miss. LEXIS 29 (Miss. 1942).

§ 25-7-67. Appraisers of the estates of decedents.

The chancery court or the chancellor in vacation in each chancery court district of this state shall fix and allow reasonable compensation for appraisers in the estates of deceased persons, and said compensation shall be paid by the executor or administrator from the funds of said estate after same has been allowed by the chancery court or chancellor in vacation.

HISTORY:

Codes, 1880, § 2016; 1892, § 2031; 1906, § 2210; Hemingway's 1917, § 1895; 1930, § 1814; 1942, § 3962; Laws, 1958, ch. 283, eff 60 days from and after passage, approved Feb. 19, 1958.

Cross References —

Appointment, duties, and powers of temporary administrators, see §§ 91-7-53 et seq.

Requirement that inventory and appraisement of estate be by disinterested persons, see § 91-7-109.

Issuance of warrants of appraisement, see § 91-7-111.

Form of warrant to appraisers, see § 91-7-113.

RESEARCH REFERENCES

Am. Jur.
9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 434.

§ 25-7-69. Officers and jurors in ad quod damnum proceedings.

Each juror summoned and attending the execution of a writ ad quod damnum from the board of supervisors shall be entitled to Two Dollars ($2.00), the clerk shall be entitled to One Dollar ($1.00) for the writ, and the sheriff shall be entitled to three dollars for summoning the jury and to Three Dollars ($3.00) for his attendance upon the inquest, to be paid by the party petitioning for the writ, who may be required to give security for the payment of such fees before the writ is issued.

HISTORY:
Codes, 1880, § 941; 1892, § 2032; 1906, § 2211; Hemingway's 1917, § 1896; 1930, § 1815; 1942, § 3963.

Cross References —
Power of county board of supervisors to subpoena witnesses, see § 19-3-51.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d, Jury § 93.

CJS.
50A C.J.S., Juries § 194.

§ 25-7-71. To persons bringing back prisoner on extradition.

Any party, acting under a requisition of the Governor or acting without a requisition in cases where the person to be returned has waived extradition in writing, who brings back to this state and delivers to the sheriff of the county where the offense is alleged to have been committed a person charged with felony shall receive, to be paid out of the county treasury on the order of the circuit court and of the board of supervisors, Twenty Cents (20¢) a mile for the distance necessarily traveled in coming from the place of arrest to the place of delivery; but the same shall not be paid to any party who has received or who claims a reward from the state, county, or person.

HISTORY:
Codes, 1892, § 2033; 1906, § 2212; Hemingway's 1917, § 1897; 1930, § 1816; 1942, § 3964; Laws, 1884, p 75; Laws, 1950, ch. 326.

Cross References —
Arrest and delivery of fugitives from justice, generally, see § 7-1-25.

Authority of Governor to offer rewards for absconding criminals, see § 7-1-29.

Authority of Governor to appoint agent to demand return of fugitive from other state, see § 7-1-31.

Expenses of returning felons, generally, see § 25-7-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Effect of other provisions.
3. Determination on petition.

1. In general.
Governor's agent who, pursuant to his appointment, returned fugitives charged with kidnapping, could not recover from the county either for expenses of the victim, who went

along with him, or those of himself personally in addition to the mileage allowed him. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

In respect to mileage allowances and other expenses incurred by a person appointed as agent of the Governor to return fugitives from another state, such person is not acting as an officer of the court even though he is a sheriff or deputy sheriff. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Fact that defendant obtained an allowance for expenses for returning a fugitive from justice, did not affect contract between him and plaintiff whereby the latter advanced a specified sum for expenses for the return of the fugitive. Bynum v. Dalton, 95 Miss. 429, 48 So. 1019, 1909 Miss. LEXIS 254 (Miss. 1909).

2. Effect of other provisions.

Code 1942, § 3965 is inapplicable as to a petition in circuit court against the county by Governor's agent for allowance of mileage and other expenses, under this section and Code 1942, § 3984, for returning fugitives. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Code 1942, § 3965 does not supersede this section or Code 1942, § 3984, but supplements them by providing, on a proper showing in advance for the necessity thereof, an allowance in addition to the expenses of the executive agents, extra guards, and expenses in maintenance of the guard and prisoners, and other incidental expenses inherent in such sections. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

3. Determination on petition.

The only matters into which the circuit court may inquire on petition for mileage and other expenses incurred by Governor's agent in returning fugitives from another state, are whether the requisition was issued and the fugitives returned, the actual mileage from the place of arrest in the other state to the point of delivery, the reasonable expenses of feeding and lodging the fugitives, the reasonable expenses of the guard along by the executive agent, and other reasonably essential expenses incidentally necessary to executing the warrant of requisition. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

On petition filed in circuit court for an order directing county board of supervisors to issue warrant based on mileage claim for returning fugitives from another state under Governor's requisition, it is not necessary that the supervisors be summoned and consequently a defect in the summons, as well as the failure of the supervisors to appear and contest on behalf of the county, were immaterial. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

One petitioning circuit court for allowance of mileage for returning fugitives under Governor's requisition, is not required by virtue of Code 1942, § 3922 to first file his petition or claim with the district attorney, but such section does require that the judge must ask the advice of the district attorney before allowing the claim or petition, and, until the court does so, the court has no authority to allow or disallow the claim, so that a judgment denying the petition is tantamount merely to an erroneous dismissal of the claim and not a final judgment on its merits. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

While under Code 1942, § 3922, a circuit court has no authority to allow or disallow a claim until it has first sought the advice of the district attorney, the latter's approval or disapproval is not binding upon the court and the allowance or disallowance of the claim is ultimately committed to the judgment of the court, although in respect to a claim against the county, such as mileage for returning fugitives under Governor's requisition, the claim may be contested by the district attorney in the circuit court on behalf of the county. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Judgment of circuit court in allowing or disallowing claim for mileage is an adjudication, and from an adverse adjudication an appeal will lie to the supreme court. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

RESEARCH REFERENCES

Am. Jur.

31A Am. Jur. 2d, Extradition §§ 49-52.

§ 25-7-73. Expenses of returning felon.

The circuit court or the judge thereof in vacation is hereby authorized and empowered to allow all necessary and proper expenses to any person or persons acting under a requisition of the Governor, or acting without a requisition in cases where the person to be returned has waived extradition in writing, who may travel out of this state for the purpose of identifying or assisting in any proper and necessary manner in the return to this state of a person charged with felony.

Such expenses may be allowed only upon a petition to said court or judge filed by the district attorney, setting out the necessity for the expenditure, an estimate of the probable amount to be spent, the name of the person charged with felony, the crime with which such person is charged, and the place to which the proposed trip will be made. If, upon the hearing of said petition, the circuit court or judge is satisfied of the necessity of the expenditure, an order authorizing the same may be entered to that effect; and thereafter, upon sworn itemized statement of such expenses, the court or judge shall, if such expenses are reasonable and proper, enter an order allowing the same, which order, upon presentation to the board of supervisors of the county in which such person is charged with felony, shall be allowed by said board.

HISTORY:

Codes, 1942, § 3965; Laws, 1932, ch. 139; Laws, 1950, ch. 325.

Cross References —

Arrest and delivery of fugitives, generally, see § 7-1-25.

Authority of Governor to offer rewards for absconding criminals, see § 7-1-29.

Authority of Governor to appoint agent to demand return of fugitive from other state, see § 7-1-31.

JUDICIAL DECISIONS

1. In general.

This section is inapplicable as to a petition in circuit court against the county by Governor's agent for allowance of mileage, etc., under Code 1942, §§ 3964 and 3984, for returning fugitives. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Code 1942, § 3965 does not supersede this section or Code 1942, § 3984, but supplements them by providing, on a proper showing in advance for the necessity thereof, an allowance in addition to the expenses of the executive agents, extra guards, and expenses in maintenance of the guard and prisoners, and other incidental expenses inherent in such sections. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

In respect to mileage allowances and other expenses incurred by a person appointed as agent of the Governor to return fugitives from another state, such person is not acting as an officer of the court even though he is a sheriff or deputy sheriff. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

The only matters into which the circuit court may inquire on petition for mileage and other expenses, under this section and Code 1942, § 3984, incur red by Governor's agent in returning fugitives from another state, are whether the requisition was issued and the fugitives returned, the actual mileage from the place of arrest in the other state to the point of delivery, the reasonable expenses of feeding and lodging the fugitives, the reasonable expenses of the guard along by the executive agent, and other reasonably essential expenses incidentally necessary to executing the warrant of requisition. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

RESEARCH REFERENCES

Am. Jur.

31A Am. Jur. 2d, Extradition §§ 49-52.

§ 25-7-75. Expenses of returning certain prisoners to other states.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state or territory or the District of Columbia, the Governor of this state may agree with the executive authority of such other state or territory for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state or territory or the District of Columbia, upon condition that such person be returned to such other state or territory at the expense of this state as soon as the prosecution in this state is terminated. The expenses of returning such prisoners to other states shall be paid out of an appropriation to be made for that purpose known as "the prisoner extradition fund."

HISTORY:

Codes, 1942, § 3965.5; Laws, 1968, ch. 352, § 1, eff from and after passage (approved May 20, 1968).

Cross References —

Compensation to persons bringing back prisoners on extradition, see § 25-7-71.

Expenses of returning felon to state, see § 25-7-73.

RESEARCH REFERENCES

Am. Jur.

31A Am. Jur. 2d, Extradition §§ 49-52.

§ 25-7-77. Fees for attachment for rent.

The officer issuing an attachment or distress for rent or supplies furnished by a landlord to a tenant, shall be entitled to One Dollar and Fifty Cents ($1.50) for the affidavit, bond, and writ, to be paid by the party obtaining them, which shall be collected with the rent or other demand and be refunded to such party. The officer serving the attachment shall be entitled to the same fees and commissions as are allowed to sheriffs for serving an attachment against an absconding debtor and making the money thereon.

HISTORY:

Codes, 1880, § 1329; 1892, § 2034; 1906, § 2213; Hemingway's 1917, § 1898; 1930, § 1817; 1942, § 3966.

Cross References —

Persons entitled to attachment for rent and supplies, see § 89-7-55.

§ 25-7-79. Fees of officers and witness in unlawful entry and detainer court.

The justices holding a court for the trial of an unlawful entry and detainer shall each be entitled to Two Dollars ($2.00) a day for attending the trial; and other fees of witnesses and officers for services rendered in relation to the proceeding and trial shall be the same as the fees for similar services in the circuit court, and shall be taxed in the costs.

HISTORY:
Codes, 1880, § 2662; 1892, § 2035; 1906, § 2214; Hemingway's 1917, § 1899; 1930, § 1818; 1942, § 3967.

Cross References —
Persons entitled to remedy of warrant of unlawful entry and detainer, see § 11-25-1.

Award of costs in unlawful entry and detainer case, see § 11-25-27.

§ 25-7-81. Secretary of State.

The Secretary of State shall charge the following fees:

(a) For every commission issued by him to persons appointed by the Governor as a commissioner of this state in any other state, territory, or district of the United States, or in any foreign country $10.00

(b) For recording charter of a corporation for literary, religious, benevolent, fraternal, or scientific purposes, and not for pecuniary profits, directly or indirectly 20.00

(c) For commission of each notary public 25.00

(d) For commission of each commissioner of deeds 10.00

HISTORY:
Codes, 1880, §§ 1030, 1642; 1892, § 2037; 1906, § 2216; Hemingway's 1917, § 1901; 1930, § 1820; 1942, § 3969; Laws, 1920, ch. 109; Laws, 1958, ch. 346, § 1; Laws, 1981, ch. 431, § 3, eff from and after July 1, 1981.

Cross References —
General duties of Secretary of State, see §§ 1-5-1 et seq., 7-3-1 et seq.

Fee charged by Secretary of State for registering trademark, see § 75-25-5.

Filing fee charged by Secretary of State for filing business tender offer disclosure statement, see § 75-72-117.

RESEARCH REFERENCES

Am. Jur.
72 Am. Jur. 2d, States, Territories, and Dependencies § 65.

§ 25-7-83. Executive Director of the Department of Finance and Administration.

The auditor of public accounts shall charge the following fees:

(a) The auditor shall be entitled to charge and receive of persons paying taxes to him five per centum thereon.

(b) For each transcript from land records, containing official certificate and not more than five land descriptions $1.50

(c) For each additional land description over five 1.00

(d) For each official certificate other than land record transcript .. .15

And, in addition, on each hundred words over one hundred .... .15

(e) For receiving, examining, and filing each insurance statement and issuing authority 5.00

The auditor shall make all necessary transcripts of the records of his office relating to lands sold for taxes and certified into the land office, and give all necessary certificates concerning them from the records in his office. He shall collect the proper fees therefor and pay the same over to the land commissioner for payment into the state treasury.

HISTORY:

Codes, 1880, §§ 514, 563, 567, 575; 1892, § 2038; 1906, § 2217; Hemingway's 1917, § 1902; 1930, § 1821; 1942, § 3970.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 7-11-4 provides that the words "state land commissioner", "land commissioner", "state land office", and "land office" shall mean the secretary of state.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Authority and duties of Executive Director of the Department of Finance and Administration, see §§ 7-7-1 et seq.

Fees not being payable until bill produced, see § 11-53-67.

§ 25-7-85. Secretary of State; fee relating to land transactions.

The Secretary of State shall charge, collect and pay into the State Treasury the following fees, viz:

a. For each application filed for the purchase of tax-forfeited property	$2.50
b. For copy of patent	2.00
c. For certificate from 1875 to date, certifying each and every sale and disposition by the state	5.00
d. For certificate of land records information	2.00
e. For copy of any land record, not certified	1.00

f. Photostat copies of plats and field notes, as follows:

Size of Sheet	Per Page
8 ½″ x 11″ and under	$0.50
Over 8 ½″ x 11″ and not more than 8 ½″ x 14″	.60
Over 8 ½″ x 14″ and not more than 18″ x 24″	1.20
All over 18″ x 24″	2.00

HISTORY:

Codes, 1892, § 2039; 1906, § 2218; Hemingway's 1917, § 1903; 1930, § 1822; 1942, § 3971; Laws, 1958, ch. 353; Laws, 1978, ch. 458, § 18, eff from and after January 1, 1980.

Cross References —

Fees not being payable until bill produced, see § 11-53-67.

§ 25-7-87. Fees of state officers to be paid into Treasury.

It shall be the duty of all state officers who receive a salary to continue to collect the fees or perquisites required of them by any law. Each of said officers shall keep a detailed account of such collections among the official receipts of his office and pay them in full into the state treasury on the first Monday of each month. The payment shall be accompanied by the affidavit of the officer averring that he has collected all fees allowed by law for all work performed by him during the preceding month, and showing the amount thereof.

HISTORY:
Codes, 1892, § 2040; 1906, § 2219; Hemingway's 1917, § 1904; 1930, §§ 1823, 6513; 1942, §§ 3972, 4178.

Cross References —
Payment of salary of deceased officer beyond date of death, see Miss. Const. Art. 4, § 92.

Salaries being full compensation for public officers, see § 25-3-37.

RESEARCH REFERENCES

Am. Jur.
63 Am. Jur. 2d, Public Funds §§ 1, 2.

63A Am. Jur. 2d, Public Officers and Employees §§ 341, 423.

§ 25-7-89. Fee for transcript of testimony and exhibits to testimony, or copy of such transcript and exhibits.

Each court reporter shall receive Two Dollars and Forty Cents ($2.40) per page for each transcript of testimony, or copy of such transcript, which shall be taxed as costs to each party or individual who may obtain such transcript or copy thereof. The court reporter shall file with the clerk an original and one (1) copy of the transcript, for which copy no charge shall be made.

HISTORY:
Laws, 1994, ch. 643, § 3; Laws, 2004, ch. 446, § 1, eff from and after July 1, 2004.

Cross References —
Additional fees for court reporters, see §§ 9-13-1 et seq.

CHAPTER 9.

STATEWIDE PERSONNEL SYSTEM

In General. [Repealed]. 25-9-1
Personnel Administration System. 25-9-101
Protection of Public Employee From Reprisal for Giving Information to Investigative Body or Agency. 25-9-171
Veteran's Preference. 25-9-301
Registration Under Military Selective Service Act. 25-9-351
State Employee Management Training [REPEALED]. 25-9-401

IN GENERAL
[REPEALED]

Sec.
25-9-1 through 25-9-49. Repealed.

§§ 25-9-1 through 25-9-49. Repealed.

Repealed by Laws, 1980, ch. 303, § 17, eff from and after February 1, 1981.

§ 25-9-1 through 25-9-11. [Codes, 1942, §§ 8935-01 to 8935-03; Laws, 1970, ch. 394, §§ 1-3]

§ 25-9-13. [Codes, 1942, § 8935-03; Laws, 1970, ch. 394, § 3; Laws, 1980, ch. 560, § 7]

§ 25-9-15 through § 25-9-39. [Codes, 1942, §§ 8935-03 to 8935-12; Laws, 1970, ch. 394, §§ 3-12]

§ 25-9-41 through § 25-9-47. [En Laws, 1976, ch. 377, §§ 1-4]

§ 25-9-49. [En Laws, 1978, ch. 520, § 7]

Editor's Notes —

Former §§ 25-9-1 through 25-9-39 pertained to the Mississippi classification law.

Former §§ 25-9-41 through 25-9-47 pertained to the establishment of a coordinated merit system.

Former § 25-9-49 regulated the employment of public employees as consultants or employees by state agencies subject to the Mississippi Classification Act of 1970 (Chapter 9 of Title 25, Mississippi Code of 1972).

PERSONNEL ADMINISTRATION SYSTEM

Sec.	
25-9-101.	Purpose of chapter.
25-9-103.	Principles applicable to administration of state personnel system.
25-9-105.	Consolidation of agencies and employees into state personnel system.
25-9-107.	Definitions.
25-9-109.	State Personnel Board members, terms of office, qualifications, vacancies.
25-9-111.	Officers of board, regulations as to meetings.
25-9-113.	Regular meetings; compensation and expenses of members.
25-9-115.	State Personnel Board to report to Legislature recommendations for judicial salaries; factors to be considered.
25-9-116.	Suspension of hiring, promotion and other reclassifications.
25-9-117.	Mississippi Personnel Advisory Council; membership; duties; expenses.
25-9-119.	State personnel director; selection; qualifications; duties; funding of agency expenses; deposit of monies into State General Fund.

Sec.
25-9-120. Contract personnel not state service or nonstate service employees of state; Personal Service Contract Review Board abolished; Public Procurement Review Board to be the Personal Service Contract Review Board.
25-9-121. State service; status of permanent or certified employees under prior systems.
25-9-123. Nonstate service; exclusion of positions covered by prior systems.
25-9-125. Temporary assignment of state service employees to nonstate service.
25-9-126. Furlough of federally funded employees.
25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions; exemption of personnel actions of certain state agencies from State Personnel Board procedures for limited time period; operating state vehicle without license good cause grounds for dismissal; male state employees required to register with selective service.
25-9-129. Employee appeals board; membership; terms of office; compensation.
25-9-131. Proceedings before employee appeals board; judicial review; legislative intent.
25-9-132. Judicial review of employee appeals board decisions.
25-9-133. Recommendations and position audits by board.
25-9-134. Establishment of program to encourage and recognize excellence in government.
25-9-135. State personnel director to review payrolls and collect statistical information; retention of payroll warrants for agency violations.
25-9-137. Reorganization and consolidation of prior systems.
25-9-139. Status of employees, equipment and supplies of prior systems; transfer of funds appropriated to prior systems.
25-9-141. Funding for State Personnel Board; proration of costs; funding of agency expenses; deposit of monies into State General Fund.
25-9-143. Status of employees in merit positions and exempt positions.
25-9-145. Official coercion prohibited; penalties.
25-9-147. Variable compensation plan; annual review and report; designation of plan as "Colonel Guy Groff State Variable Compensation Plan.".
25-9-148. Annual report regarding increases in compensation, other than salary increases authorized by Legislature.
25-9-149. Discriminatory practices prohibited.
25-9-151. Longevity service award program.
25-9-153. Operator of state-owned vehicle must have valid driver's license from Mississippi or contiguous state; operator of vehicle owned by state institution of higher learning must have valid driver's license of appropriate classification from any state; penalty.
25-9-155. Nonstate service employees to be given preference for state service positions over general public.

§ 25-9-101. Purpose of chapter.

It is the purpose of this chapter to establish in the State of Mississippi a system of personnel administration based on sound methods of personnel administration governing the establishment of employment positions, classification of positions and the employment conduct, movement and separation of state employees; to build a career service in government which will attract, select and retain the best persons, with incentives in the form of equal opportunities for initial appointment and promotions in the state service; to establish a system of personnel management that will ensure the effective and efficient use of employees in the state service; and to perform such other duties as may be specified in this chapter or any other law.

HISTORY:

Laws, 1980, ch. 303, § 1; Laws, 2012, ch. 329, § 7, eff from and after July 1, 2012.

Editor's Notes —

Laws of 2012, ch. 329, § 11, provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Cross References —

Civil service system for municipal employment, see §§ 21-31-1 et seq.

Duty of the State Personnel Board to report to the state legislature annually with recommendations on salary increases and amounts for all state and county elected officials and state appointed officials, see § 25-3-71.

Employees of Mississippi Ethics Commission being excluded from provisions of state personnel system, see § 25-4-15.

Veterans' preference in appointments by the State Personnel Board, see §§ 25-9-301 to 25-9-305.

Establishment by the State Personnel Board of rules and regulations regarding veterans' preference, see § 25-9-305.

Appointment, compensation, and discharge of certain personnel under state superintendent of education, see § 37-3-13.

Applicability of this chapter to employees of the division of vocational technical education in the state department of education, see § 37-3-25.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, and powers and duties of Department of Human Services, see § 37-33-163.

Application of this section to compensation of employees of Department of Human Services, see § 43-1-2.

Applicability of the state personnel system to the highway safety patrol, see § 45-3-7.

JUDICIAL DECISIONS

1. Mississippi veterans home purchase board.

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

OPINIONS OF THE ATTORNEY GENERAL

The State Personnel Board statutes, Sections 25-9-101 et seq., supersede the conflicting provisions of Section 71-3-93, and the Workers' Compensation Commission may not establish and enforce its own rules and procedures that would conflict with State Personnel Board regulations for hiring, firing, appointment, promotion, demotion, and payment of personnel. 2000 Miss. Op. Att'y Gen. 177.

RESEARCH REFERENCES

ALR.

What constitutes "Willful" violation under age discrimination in employment act (29 U.S.C.S. §§ 626 et seq.) entitling victim to liquidate damages. 165 A.L.R. Fed. 1.

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 1 et seq.

CJS.

67 C.J.S., Officers §§ 75–134.

§ 25-9-103. Principles applicable to administration of state personnel system.

The State Personnel Board herein established shall administer a state personnel system in accordance with the following principles:

(a) To recruit, select and advance employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment;

(b) To provide equitable and adequate compensation;

(c) To train employees, as needed, to assure high quality performance;

(d) To retain employees on the basis of the adequacy of their performance, to correct inadequate performance, and to separate employees whose inadequate performance cannot be corrected;

(e) To assure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, national origin, sex, religious creed, age or disability;

(f) To assure that employees are free from coercion for partisan or political purposes and to prohibit employees from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office;

(g) To provide authority for the establishment and abolishment of employment positions within the departments, agencies and institutions covered under the provisions of this chapter.

HISTORY:

Laws, 1980, ch. 303, § 2(1); Laws, 1998, ch. 321, § 1, eff from and after July 1, 1998.

Cross References —

Prohibition against discrimination as to person seeking employment in state service, or employed in state service, on basis of race, color, religion, sex, national origin, age or handicap, see § 25-9-149.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

JUDICIAL DECISIONS

1. In general.

Even though a terminated employer was a nonstate service employee under Miss. Code Ann. § 25-9-107, the employee was properly reinstated because deference was given to the Employee Appeals Board sitting en banc and substantial evidence, pursuant to the standard of review of Miss. Code Ann. § 25-9-132, showed that the employee's termination was politically motivated in violation of Miss. Code Ann. § 25-9-127 and Miss. Code Ann. § 25-9-103. Miss. DOT v. Rutland, 965 So. 2d 696, 2007 Miss. App. LEXIS 133 (Miss. Ct. App.), cert. denied, 964 So. 2d 508, 2007 Miss. LEXIS 540 (Miss. 2007).

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(1)(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

RESEARCH REFERENCES

ALR.

What constitutes employment discrimination on basis of "marital status" for purposes of state civil rights laws. 44 A.L.R.4th 1044.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 A.L.R.5th 623.

Award of liquidated damages under § 7 of Age Discrimination in Employment Act of 1967 (29 USCS § 626) for "willful" violations of the Act. 55 A.L.R. Fed. 604.

Proving that discharge was because of age, for purposes of Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 58 A.L.R. Fed. 94.

Who is "employee" within meaning of Age Discrimination in Employment Act (29 USCS §§ 621-634). 69 A.L.R. Fed. 700.

Award of "front pay" under § 7 of Age Discrimination in Employment Act of 1967 (29 USCS § 626). 74 A.L.R. Fed. 745.

Reinstatement as remedy for discriminatory discharge or demotion under Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 78 A.L.R. Fed. 575.

Actions under Age Discrimination in Employment Act (29 USCS §§ 621-634) challenging hiring or retirement practices in law enforcement employment. 79 A.L.R. Fed. 373.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 93 A.L.R. Fed. 10.

Who is "employer" within meaning of Age Discrimination in Employment Act of 1967 (29 USCS § 621 et seq.). 137 A.L.R. Fed. 551.

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 1-4, 9, 34.

Lawyers' Edition.

Public employee's right of free speech under Federal Constitution's First Amendment-Supreme Court cases. 97 L. Ed. 2d 903.

§ 25-9-105. Consolidation of agencies and employees into state personnel system.

It is the intent of this chapter to consolidate into one (1) state personnel system all agencies and employees now administered by the Mississippi Classification Commission, agencies and employees now administered by the Mississippi Coordinated Merit System Council, and such other agencies and employees except as excluded by this chapter. The State Personnel Board established herein shall assume the total functions of personnel administration services (a) for those agencies and positions now required and operating under merit system rules due to federal statutory and regulatory provisions or state law, and (b) for all state agencies, departments and institutions except as excluded by this chapter. However, state agencies which are not required by law to operate under merit system rules may request an exemption from the applicant selection process by specific job class or on an agency-wide basis when such exemption is justifiable.

HISTORY:

Laws, 1980, ch. 303, § 2(2); Laws, 2014, ch. 491, § 2, eff from and after passage (approved April 15, 2014).

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-107. Definitions.

The following terms, when used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Board" means the State Personnel Board created under the provisions of this chapter.

(b) "State service" means all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.

(c) "Nonstate service" means the following officers and employees excluded from the state service by this chapter. The following are excluded from the state service:

(i) Members of the State Legislature, their staff and other employees of the legislative branch;

(ii) The Governor and staff members of the immediate Office of the Governor;

(iii) Justices and judges of the judicial branch or members of appeals boards on a per diem basis;

(iv) The Lieutenant Governor, staff members of the immediate Office of the Lieutenant Governor and officers and employees directly appointed by the Lieutenant Governor;

(v) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;

(vi) Members of boards and commissioners appointed by the Governor, Lieutenant Governor or the State Legislature;

(vii) All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the Mississippi Community College Board, and community and junior colleges;

(viii) Officers and enlisted members of the National Guard of the state;

(ix) Prisoners, inmates, student or patient help working in or about institutions;

(x) Contract personnel; provided, that any agency which employs state service employees may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the State Personal Service Contract Review Board under Section 25-9-120(3). Before paying any warrant for such contractual services in excess of One Hundred Thousand Dollars ($100,000.00), the Auditor of Public Accounts, or the successor to those duties, shall determine whether the contract involved was for personal or professional services, and, if so, was approved by the State Personal Service Contract Review Board;

(xi) Part-time employees; provided, however, part-time employees shall only be hired into authorized employment positions classified by the board, shall meet minimum qualifications as set by the board, and shall be paid in accordance with the Variable Compensation Plan as certified by the board;

(xii) Persons appointed on an emergency basis for the duration of the emergency; the effective date of the emergency appointments shall not be earlier than the date approved by the State Personnel Director, and shall be limited to thirty (30) working days. Emergency appointments may be extended to sixty (60) working days by the State Personnel Board;

(xiii) Physicians, dentists, veterinarians, nurse practitioners and attorneys, while serving in their professional capacities in authorized employment positions who are required by statute to be licensed, registered or otherwise certified as such, provided that the State Personnel Director shall verify that the statutory qualifications are met prior to issuance of a payroll warrant by the Auditor;

(xiv) Personnel who are employed and paid from funds received from a federal grant program which has been approved by the Legislature or the Department of Finance and Administration whose length of employment has been determined to be time-limited in nature. This subparagraph shall apply to personnel employed under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, and other special federal grant programs which are not a part of regular federally funded programs wherein appropriations and employment positions are appropriated by the Legislature. Such employees shall be paid in accordance with the Variable Compensation Plan and shall meet all qualifications required by federal statutes or by the Mississippi Classification Plan;

(xv) The administrative head who is in charge of any state department, agency, institution, board or commission, wherein the statute specifically authorizes the Governor, board, commission or other authority to appoint said administrative head; provided, however, that the salary of such administrative head shall be determined by the State Personnel Board in accordance with the Variable Compensation Plan unless otherwise fixed by statute;

(xvi) The State Personnel Board shall exclude top-level positions if the incumbents determine and publicly advocate substantive program policy and report directly to the agency head, or the incumbents are required to maintain a direct confidential working relationship with a key excluded official. Provided further, a written job classification shall be approved by the board for each such position, and positions so excluded shall be paid in conformity with the Variable Compensation Plan;

(xvii) Employees whose employment is solely in connection with an agency's contract to produce, store or transport goods, and whose compensation is derived therefrom;

(xviii) Repealed;

(xix) The associate director, deputy directors and bureau directors within the Department of Agriculture and Commerce;

(xx) Personnel employed by the Mississippi Industries for the Blind; provided, that any agency may enter into contracts for the personal services of MIB employees without the prior approval of the State Personnel Board or the State Personal Service Contract Review Board; however, any agency contracting for the personal services of an MIB employee shall provide the MIB employee with not less than the entry-level compensation and benefits that the agency would provide to a full-time employee of the agency who performs the same services;

(xxi) Personnel employed by the Mississippi Department of Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources as law enforcement trainees (cadets); such personnel shall be paid in accordance with the Colonel Guy Groff State Variable Compensation Plan.

(d) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, department, unit or the head thereof, is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

HISTORY:

Laws, 1980, ch. 303, § 3; Laws, 1981, ch. 504, § 10; Laws, 1984, ch. 488, § 171; Laws, 1990, ch. 429, § 1; Laws, 1994, ch. 377, § 1; Laws, 1994 Ex Sess, ch. 26, § 18; Laws, 1996, ch. 343, § 1; Laws, 1997, ch. 609, § 4; Laws, 1998, ch. 574, § 5; Laws, 2003, ch. 517, § 1; Laws, 2009, ch. 363, § 1; Laws, 2014, ch. 397, § 4, eff from and after July 1, 2014.

Editor's Notes —

Former subparagraph (xviii) in paragraph (c) relating to State Prison Emergency Construction and Management Board personnel was repealed by its own terms from and after July 1, 1996.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Laws, 1996, ch. 343, §§ 3 and 4, provide as follows:

"SECTION 3. All new employees shall meet criteria of the State Personnel Board as presently exists for employment.

"SECTION 4. The Department of Agriculture and Commerce shall consult with the Office of the Attorney General prior to taking personnel actions permitted by this act to review for compliance with applicable state and federal law."

Laws, 1998, ch. 574, § 2 provides as follows:

"SECTION 2. It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

Cross References —

Abolishment of agency, see § 5-11-1.

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Authority of executive director of any agency of state government to employ staff and expend funds authorized to agency, see § 7-17-5.

Agency for budgetary purposes and organizational purposes, see § 7-17-11.

Persons and positions subject to municipal civil service, see § 21-31-13.

Applicability of definitions from this section to provisions regarding vacation time and sick leave, see §§ 25-3-91, 25-3-97 and 25-3-101.

Appointing authority of nonstate service agency, as defined in this section, developing rules for maintaining vacation and sick leave records, see § 25-3-97.

Prohibition against discrimination as to person seeking employment in state service, or employed in state service, on basis of race, color, religion, sex, national origin, age or handicap, see § 25-9-149.

Preference for nonstate service employees for state jobs, see § 25-9-153.

Protection of public employee from reprisal for giving information to investigative body or agency, see § 25-9-171 et seq.

Provision that, for purposes of cafeteria fringe benefit plan provisions, the term "eligible employee" includes state agency officers and employees whether or not engaged in state service, as defined in this section, see § 25-17-1.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Applicability of this section to the director and other administrative heads of the division of medicaid in the office of the governor, see § 43-13-107.

JUDICIAL DECISIONS

1. "Nonstate service."

Even though a terminated employer was a nonstate service employee under Miss. Code Ann. § 25-9-107, the employee was properly reinstated because deference was given to the Employee Appeals Board sitting en banc and substantial evidence, pursuant to the standard of review of Miss. Code Ann. § 25-9-132, showed that the employee's termination was politically motivated in violation of Miss. Code Ann. § 25-9-127 and Miss. Code Ann. § 25-9-103. Miss. DOT v. Rutland, 965 So. 2d 696, 2007 Miss. App. LEXIS 133 (Miss. Ct. App.), cert. denied, 964 So. 2d 508, 2007 Miss. LEXIS 540 (Miss. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Mississippi Business Finance Corporation is a state agency, and one part-time employee and one full-time attorney, each of whom will be paid solely with MBFC funds, would be non state service employees. 1992 Miss. Op. Att'y Gen. 524.

Miss. Code Section 25-9-107(c)(vii) provides that all academic officials, members of teaching staff and employees of state institutions of higher learning are non-state service and, therefore, are not subject to activities, rules and regulations of State Personnel Board. 1993 Miss. Op. Att'y Gen. 19.

Section 25-3-97 refers to persons appointed to a position in state service or non-state service as defined in § 25-9-107. 1998 Miss. Op. Att'y Gen. 313.

In order to give meaning to the conflicting statutory provisions, the nursing board and the state personnel board have roles in setting the salary of the executive director. Since Section 73-15-17(m) is specific to the nursing board and Section 25-9-107(c) is a general statute, the nursing board sets the salary of its executive director within a salary range established by the state personnel board in accordance with the variable compensation plan. 2006 Miss. Op. Att'y Gen. 361.

The Board of Nursing sets the salary of its executive director within a salary range established by the State Personnel Board in accordance with the variable compensation plan. The Board may vote at any time to adjust the salary within the range established and amended by the Personnel Board. The Board does not have to vote to change the salary each time the range changes. 2006 Miss. Op. Att'y Gen. 544.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 8- 22, 31.

CJS.

67 C.J.S., Officers §§ 75–134.

§ 25-9-109. State Personnel Board members, terms of office, qualifications, vacancies.

There is hereby created a board of five (5) members to be known as the State Personnel Board to be appointed by the Governor as hereinafter provided, with the advice and consent of the Senate.

Gubernatorial appointees serving on the board on June 30, 1984, shall continue to serve on the board, and the terms of such members shall be extended as follows:

(a) The term of the member serving from the Third Supreme Court District shall expire on June 30, 1986.

(b) The term of the member serving from the state at large shall expire on June 30, 1987.

(c) The term of the member serving from the First Supreme Court District shall expire on June 30, 1988.

(d) The term of the member serving from the Second Supreme Court District shall expire on June 30, 1989.

For a term to begin on July 1, 1984, the Governor shall appoint one (1) member from the state at large for a term of one (1) year.

Upon the expiration of the foregoing terms, such appointments shall be made by the Governor from the appropriate geographical area for terms of five (5) years beginning July 1 of the year of appointment.

An appointment to fill a vacancy, other than by expiration of a term of office, shall be made by the Governor for the balance of the unexpired term.

All appointees shall have at least a bachelor's degree in public administration, personnel management or in a management-related field of study or, in the alternative, shall have a bachelor's degree in any field and ten (10) years of experience in a position the duties of which specifically required the appointee to carry out personnel management responsibilities in an organization and were the exclusive responsibilities of his position. An appointee with a graduate degree in public administration, personnel management or in a management-related field of study shall also be qualified to serve on the board. In the alternative, an appointee with a graduate degree in any field shall be qualified if he has five (5) years of experience in a position the duties of which specifically required him to carry out personnel management responsibilities in an organization and were the exclusive responsibilities of his position.

HISTORY:

Laws, 1980, ch. 303, § 4(1); Laws, 1984, ch. 488, § 304; Laws, 2005, ch. 411, § 3, eff from and after passage (approved Mar. 16, 2005.).

Cross References —

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Appointment, qualifications and term of office of members of municipal civil service commission, see § 21-31-5.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Applicability of State Personnel Board's rules and regulations to employee transfers occasioned by assumption of authority and duties of State Textbook Procurement Commission by State Board of Education, see § 37-43-2.

JUDICIAL DECISIONS

1. In general.

After accepting hearing officer's findings of fact, Employee Appeals Board (EAB) improperly set aside termination of Department of Corrections (DOC) employee who had received package from penitentiary post office which contained items normally sent to prisoners and then failed to report package to security or internal affairs as required by DOC policy; such employee was unfit to work for DOC in that she had demonstrated propensity to smuggle packages to criminals, given hearing officer's findings that employee knew package was not hers in that it was of type sent to inmates and that employee asked co-worker to deliver package to housing unit for inmates, rather than turn it in to her supervisors. Johnson v. Mississippi Dep't of Corrections, 682 So. 2d 367, 1996 Miss. LEXIS 531 (Miss. 1996).

State Personnel Board (SPB) rule providing that Employee Appeals Board (EAB) may not alter action of agency if agency acted in accordance with SPB published policies, rules and regulations does not conflict with statute providing EAB with authority to modify decision of state agency; statute does not provide any guidance as to under what circumstances EAB may modify agency's action, and SPB has statutory authority to make rules and regulations. Johnson v. Mississippi Dep't of Corrections, 682 So. 2d 367, 1996 Miss. LEXIS 531 (Miss. 1996).

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(1)(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

Section 57-1-3(4) [(4) now repealed], which regulates the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority [Mississippi Department of Information Technology Services], § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12 [now repealed], which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss. Const. Art. 1, § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1 [now repealed], 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Based upon Section 25-9-115[Repealed], the Department of Finance and Administration is only required to verify the existence of a funds shortage based upon the facts submitted by the agency and such independent findings as are reasonably practicable. Such verification would not require the Department of Finance and Administration to review or evaluate agency management decisions. 1996 Miss. Op. Att'y Gen. 352.

The State Personnel Board may not approve an educational benchmark award for a subordinate employee that will result in the employee receiving a total salary in excess of the agency head's salary as set in Section 25-3-33[Repealed], but not in excess of the salary paid to the agency head as a result of the additional benchmark award provided in Section 25-3-34. Stringer, Jr., 2001 Miss. Op. Att'y Gen. 552.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 A.L.R.4th 702.

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 9-13, 29.
15A Am. Jur. 2d, Civil Service §§ 11-13, 29.

CJS.

67 C.J.S., Officers §§ 75–134.
81A C.J.S., States §§ 434, 435.

Law Reviews.

1983 Mississippi Supreme Court Review: State legislators serving on state executive boards. 54 Miss. L. J. 46, March 1984.

§ 25-9-111. Officers of board, regulations as to meetings.

(1) There shall be a chairman and vice chairman of the board, elected by and from the membership of the board. The board shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Any member who shall not attend three (3) consecutive regular meetings of the board shall be subject to removal by a majority vote of the board members.

(2) The Lieutenant Governor may designate two (2) senators and the Speaker of the House of Representatives may designate two (2) representatives to attend any meeting of the State Personnel Board. The appointing

authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend such meetings of the board. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

HISTORY:

Laws, 1980, ch. 303, § 4(2)(3); Laws, 1984, ch. 488, §§ 305 and 306, eff from and after July 1, 1984.

Cross References —

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

For similar provision with respect to municipal civil service system, see §§ 21-31-13 et seq.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-113. Regular meetings; compensation and expenses of members.

The State Personnel Board shall prescribe the general policies by which the state personnel system shall be administered. The board shall hold regular meetings at least once each month and may hold additional meetings as may be required for the proper discharge of its duties. Members of the board shall receive a per diem as is authorized by law for each day spent in actual discharge of their duties and shall be reimbursed for mileage and actual expenses incurred in the performance of their duties in accordance with requirements of Section 25-3-41, Mississippi Code of 1972. No board member may incur per diem, travel or other expenses unless previously authorized by vote at a meeting of the board, which action shall be recorded in the official minutes of said meetings. All expenses of the board incurred in the administration of this chapter shall be paid from such funds as may be appropriated by the Legislature for such purpose.

HISTORY:

Laws, 1980, ch. 303, § 5(1); Laws, 1980, ch. 560, § 30, eff from and after passage (approved May 26, 1980).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference near the end of this section was corrected by substituting "…this chapter…" for "…this act…"

Cross References —

Approval of State Personnel Board required for Judicial Advisory Study Commission to hire personnel, see § 9-21-37.

For provision authorizing uniform per diem compensation of officers and employees of state boards, commissions and the like, see § 25-3-69.

Promulgation of rules for administration of vacation and sick leave provisions, see § 25-3-101.

Position audits to determine compliance with organization and staffing plans, see § 25-9-133.

Approval of compensation of executive director of Mississippi Industries for the Blind, see § 43-3-103.

State Personnel Board's determination of salary of all officers employed to enforce seafood conservation provisions under §§ 49-15-1 et seq.

Applicability of rules and regulations of State Personnel Board to employment of personnel by state board of funeral service, see § 73-11-49.

Requirement that salary of the executive director of state board of pharmacy be approved by State Personnel Board, see § 73-21-79.

Duty of board to set salary of executive director of public utilities staff, see § 77-2-7.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 8- 22, 31.

CJS.

81A C.J.S., States § 460.

§ 25-9-115. State Personnel Board to report to Legislature recommendations for judicial salaries; factors to be considered.

From and after November 1, 2017, and every four (4) years thereafter, the State Personnel Board shall prepare a written report to the Legislature that examines, evaluates and recommends an adequate level of compensation for the justices of the Supreme Court, the judges of the Court of Appeals, the judges of the chancery and circuit courts, the judges of the county courts, judicial staff attorneys, and law clerks. In preparing the report, the board shall consider all appropriate factors including, but not limited to, comparative judicial, judicial staff attorney, and law clerk salaries in neighboring states and in the Southeast as a whole; comparative judicial, judicial staff attorney, and law clerk salaries in the federal judiciary; salaries of comparable professionals in government, academia, private law practice and the corporate sector; changes in public sector spending; rates of inflation; and the overall economic climate.

HISTORY:

Laws, 2012, ch. 329, § 6, effective July 1, 2012.

Editor's Notes —

A former § 25-9-115 [Laws, 1980, ch. 303, § 5(2), (3); Laws, 1980 ch. 560, § 30; Laws, 1981, ch. 504, § 11; Laws, 1989, ch. 533, § 2; Laws, 1990, ch. 527, § 1;1992, ch. 455, § 1; Laws, 1993, ch. 617, § 10; Laws, 1997, ch. 609, § 1; Laws, 1999, ch. 384, § 1; Laws, 2000, ch. 544, § 1, eff from and after June 30, 2000; Repealed by operation of law on June 30, 2003, by a repealer contained in Laws, 2000, ch. 544, § 1, eff from and after June 30, 2000.] pertained to specific duties and functions of the State Personnel Board.

Laws of 2012, ch. 329, § 11, provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

§ 25-9-116. Suspension of hiring, promotion and other reclassifications.

Upon recommendation of the State Fiscal Management Board, after a determination that the state revenue and expenditure requires such action the State Personnel Board may institute an immediate suspension of all hirings, promotions, reclassifications, reallocations and pay grade realignments until such time as the state fiscal management board shall recommend that such action is no longer required.

HISTORY:

Laws, 1981, ch. 504, § 14; Laws, 1984, ch. 488, § 172, eff from and after July 1, 1984.

Editor's Notes —

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

RESEARCH REFERENCES

Lawyers' Edition.

Public employee's right of free speech under Federal Constitution's First Amendment-Supreme Court cases. 97 L. Ed. 2d 903.

§ 25-9-117. Mississippi Personnel Advisory Council; membership; duties; expenses.

(1) There is hereby created and established the Mississippi Personnel Advisory Council, which shall consist of the personnel directors of five (5) major state agencies to be appointed by the Governor. Members of the council shall serve for a term concurrent with that of the Governor.

(2) It is made the duty of the Mississippi Personnel Advisory Council and it is hereby granted the authority to:

(a) Advise the State Personnel Board in the development of comprehensive policies and programs for the improvement of public employment in the state;

(b) Assist in the formulation of rules, regulations and standards relating to the state personnel system; and

(c) Assist in the promotion of public understanding of the purposes, policies and practices of the state personnel system.

(3) Members of the council shall receive no compensation, but shall be reimbursed for their actual and necessary expenses, including food, lodging and mileage as authorized by Section 25-3-41, Mississippi Code of 1972, required for attendance at council meetings.

HISTORY:

Laws, 1980, ch. 303, § 6, eff from and after passage (approved February 8, 1980).

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-119. State personnel director; selection; qualifications; duties; funding of agency expenses; deposit of monies into State General Fund.

(1) There is created the position of the State Personnel Director who shall be selected by the State Personnel Board, with the advice and consent of the Senate. The director shall have at least a Juris Doctor degree from an accredited law school or a master's degree in business administration, personnel management or the equivalent and shall have not less than five (5) years' experience therein. His salary shall be in accordance with the Mississippi

Compensation Plan. The State Personnel Director shall serve at the will and pleasure of the State Personnel Board.

(2) The duties and responsibilities of the director shall be:

(a) To serve as executive secretary to the board, to attend meetings as directed by the board and to provide such professional, technical and other supportive assistance as may be required by the board in the performance of its duties;

(b) Consistent with board policy, to administer the operations of the State Personnel System and to otherwise act in the capacity of Chief Executive Officer to the State Personnel Board;

(c) To submit for board approval proposed rules and regulations which shall require a uniform system of personnel administration within all agencies included in this chapter. Such rules and regulations, when approved by the board, shall be binding upon the state departments, agencies and institutions covered by this chapter and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, employee recruiting, employee selection, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, reinstatement, appeals, reports of performance, payroll certification, employee training, vacation and sick leave, compensatory leave, administrative leave, standardized recordkeeping forms and procedures for leave earned, accrued and used, and all other phases of personnel administration. Such rules and regulations shall not be applicable to the emergency hiring of employees by the Public Employees' Retirement System pursuant to Section 25-11-15(7). Copies of the rules and regulations, or modifications thereto, as are approved by the State Personnel Board, shall be provided to the Chairmen of the Accountability, Efficiency and Transparency Committee of the Senate and the Fees and Salaries of Public Officers Committee of the House of Representatives, the Lieutenant Governor and the Governor at least sixty (60) days before their effective date. The respective parties may submit comments to the board regarding such rules and regulations before their effective date;

(i) Compensation plans and modifications thereto promulgated under rules and regulations shall become effective as adopted, upon appropriation therefor by the State Legislature;

(ii) The director and the board shall provide for:

1. Cost-of-living adjustments;

2. Salary increases for outstanding performance based upon documented employee productivity and exceptional performance in assigned duties; and

3. Plans to compensate employees for suggestions which result in improved management in technical or administrative procedures and result in documented cost savings for the state. In certifying promotions, the director shall ensure that an employee's anniversary date remains the same regardless of the date of his promotion;

(d) To submit to the board any proposed legislation as may be necessary to bring existing statutes relating to the administration of public employees into uniformity;

(e) To administer the rules and regulations and all other operational aspects of the State Personnel System and to assure compliance therewith in all the departments, agencies and institutions covered by the State Personnel System;

(f) To appoint and prescribe the duties of the State Personnel System staff, all positions of which shall be included in the state service;

(g) To prepare an annual budget for the board covering all the costs of operating the State Personnel System, including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the board may direct, including the Intergovernmental Personnel Act of 1970;

(h) To assist state agencies, departments and institutions in complying with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration and related matters;

(i) To recommend procedures for the establishment and abolishment of employment positions within those departments, agencies and institutions not excluded from this chapter; and

(j) To cooperate with appointing authorities in the administration of this chapter in order to promote public service and establish conditions of service which will attract and retain employees of character and capacity and to increase efficiency and economy in governmental departments by the improvement of methods of personnel administration with full recognition of the requirements and needs of management.

(3) From and after July 1, 2016, the State Personnel Board shall not charge another state agency a fee, assessment, or other charge for services or resources received by that agency from the State Personnel Board.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

HISTORY:

Laws, 1980, ch. 303, § 7; Laws, 1981, ch. 504, § 8; Laws, 1989, ch. 533, § 1; Laws, 1993, ch. 617, § 11; Laws, 1999, ch. 383, § 1; Laws, 2013, ch. 387, § 1; Laws, 2016, ch. 459, § 69, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Federal Aspects—

Intergovernmental Personnel Act of 1970, see 42 USCS §§ 4701 et seq.

OPINIONS OF THE ATTORNEY GENERAL

This section does not contain language which would permit extensive work experience to substitute for the educational requirement. 2004 Miss. Op. Att'y Gen. 140.

RESEARCH REFERENCES

ALR.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

§ 25-9-120. Contract personnel not state service or nonstate service employees of state; Personal Service Contract Review Board abolished; Public Procurement Review Board to be the Personal Service Contract Review Board.

(1) Contract personnel, whether classified as contract workers or independent contractors shall not be deemed state service or nonstate service employees of the State of Mississippi, and shall not be eligible to participate in the Public Employees' Retirement System, or the State and School Employees' Health Insurance Plan, nor be allowed credit for personal and sick leave and other leave benefits as employees of the State of Mississippi, notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth herein. Contract workers, i.e., contract personnel who do not meet the criteria of independent contractors, shall be subject to the provisions of Section 25-11-127.

(2) The Personal Service Contract Review Board is abolished. The Public Procurement Review Board shall be the Personal Service Contract Review Board and shall retain all powers and duties granted by law to the Personal Service Contract Review Board. All equipment, inventories, records, personnel, resources and other property, real or personal, tangible or intangible, of the Personal Service Contract Review Board shall be transferred to the Public Procurement Review Board as provided in Section 27-104-7. The transfer of personnel shall be commensurate with the number and classification of positions (PINS) allocated to the Personal Service Contract Review Board on June 30, 2017. Wherever the terms "Personal Service Contract Review Board" or "board," when referring to the Personal Service Contract Review Board, appear in any law, rule, regulation or document the same shall be construed to mean the Public Procurement Review Board.

HISTORY:

Laws, 1994, ch. 401, § 1; Laws, 1997, ch. 609, § 3; Laws, 1999, ch. 421, § 5; Laws, 2015, ch. 431, § 1; Laws, 2016, ch. 494, § 4; Laws, 2017, ch. 309, § 1; Laws, 2017, ch. 400, § 14, eff from and after Jan. 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of subsection (3)(a) by substituting "entered into by the Department of Human Services through June 30, 2019" for "entered into by the Department of Human Services through June 30, 2018." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Section 1 of Chapter 309, Laws of 2017, effective from and after passage (approved

March 9, 2017), amended this section. Section 14 of Chapter 400, Laws of 2017, effective from and after January 1, 2018 (approved March 29, 2017), also amended this section. As set out above, this section reflects the language of Section 14 of Chapter 400, Laws of 2017, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's Notes —

Sections 25-11-126 and 25-11-128, referred to in (1), do not exist.

Section 25-15-1, referred to in (1), was repealed by Laws of 1988, ch. 479, § 7, eff from and after July 1, 1988.

Section 25-15-21, referred to in (1), was repealed by Laws of 1992, ch. 568, § 5, eff from and after passage (approved May 15, 1992).

Laws of 1999, ch. 421, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Student Achievement Improvement Act of 1999."

By letter dated June 1, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 421, § 5.

Laws of 2016, ch. 494, § 8 provides:

"SECTION 8. Section 1 of this act [codified as Section 43-26-1] shall take effect and be in force from and after its passage [May 13, 2016], and Sections 2 through 7 of this act [amending Sections 43-15-111, 25-3-39, 25-9-120, 25-9-127, 25-53-1, and 25-53-5, respectively] shall take effect and be in force from and after July 1, 2016."

Former subsection (3) of this section, which was amended by Laws of 2017, Chapter 309 1, effective March 9, 2017, and deleted by Laws of 2017, Chapter 400, § 14, effective January 1, 2018, enumerated the powers and responsibilities of the Personal Service Contract Review Board (powers and responsibilities that are retained by the Public Procurement Review Board) and provided:

"(3) The Personal Service Contract Review Board shall have the following powers and responsibilities:

"(a) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the Mississippi Department of Transportation, any personal service contracts entered into by the Department of Human Services through June 30, 2019, which the Executive Director of the Department of Human Services determines would be useful in establishing and operating the Department of Child Protection Services, any personal service contracts entered into by the Department of Child Protection Services through June 30, 2019, any contracts for entertainers and/or performers at the Mississippi State Fairgrounds entered into by the Mississippi Fair Commission, and any contract for attorney, accountant, auditor, architect, engineer, and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d). Any rules and regulation changes related to personal and professional services contracts that may be proposed by the Personal Service Contract Review Board shall be submitted to the Chairmen of the Accountability, Efficiency and Transparency Committees of the Senate and House of Representatives at least fifteen (15) days prior to the board voting on the proposed changes, and such rules and regulation changes, if adopted, shall be promulgated in accordance with the Mississippi Administrative Procedures Act;

"(b) Approve all personal and professional services contracts involving the expenditures of funds in excess of Seventy-five Thousand Dollars ($75,000.00);

"(c) Develop mandatory standards with respect to contractual services personnel which require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Personal Service Contract Review Board shall, unless exempted under this paragraph (c) or under paragraph (d) or (j) of this subsection (3), require the agency involved to advertise such contract for public bid, and may reserve the right to reject any or all bids;

"(i) Any agency that seeks to procure personal or professional service contracts that are required to be approved by the Personal Service Contract Review Board may petition for relief from any requirement that the agency use competitive bidding as a procurement method. The agency shall be required to show to the Personal Service Contract Review Board's satisfaction one (1) of the following:

"1. Federal law or federal court order has established limitations on the use of competitive bidding for the personal or professional contracts the agency is seeking to procure; or

"2. The agency is required to hire professionals whose members are prohibited from bidding by the rules of professional conduct promulgated by the regulating agency or agencies for that professional; or

"3. The agency can establish that the use of competitive bidding will be counterproductive to the business of the agency.

"(ii) If the Personal Service Contract Review Board determines that competitive bidding shall not be required for the particular personal or professional service the agency seeks to procure, then the Personal Service Contract Review Board shall direct the agency to establish a competitive procurement procedure for selecting the personal or professional service contract that ensures open, transparent procedures for making a selection. Such procedures shall include, but not be limited to, qualifications based selection or requests for qualifications. The Personal Service Contract Review Board shall also have the authority to audit the records of any agency to ensure it has used competitive procedures to contract for the personal or professional service;

"(d) Prescribe certain circumstances whereby agency heads may enter into contracts for personal and professional services without receiving prior approval from the Personal Service Contract Review Board. The Personal Service Contract Review Board may establish a preapproved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board;

"(e) To provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;

"(f) To present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

"(g) To authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of Education shall procure these services in accordance with the Personal Service Contract Review Board procurement regulations;

"(h) To request the State Auditor to conduct a performance audit on any personal or professional service contract;

"(i) Prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year, collecting any necessary information from state agencies in making such report;

"(j) Develop and implement the following standards and procedures for the approval of any sole source contract for personal and professional services regardless of the value of the procurement:

"(i) For the purposes of this paragraph (j), the term 'sole source' means only one (1) source is available that can provide the required personal or professional service.

"(ii) An agency that has been issued a binding, valid court order mandating that a particular source or provider must be used for the required service must include a copy of the applicable court order in all future sole source contract reviews for the particular personal or professional service referenced in the court order.

"(iii) Any agency alleging to have a sole source for any personal or professional service shall have published on the procurement portal website established by Sections 25-53-151 and 27-104-165, for at least fourteen (14) days, the terms of the proposed contract for those services. In addition, the publication shall include, but is not limited to, the following information:

"1. The personal or professional service offered in the contract;

"2. An explanation of why the personal or professional service is the only one that can meet the needs of the agency;

"3. An explanation of why the source is the only person or entity that can provide the required personal or professional service;

"4. An explanation of why the amount to be expended for the personal or professional service is reasonable; and

"5. The efforts that the agency went through to obtain the best possible price for the personal or professional service.

"(iv) If any person or entity objects and proposes that the personal or professional service published under subparagraph (iii) of this paragraph (j) is not a sole source service and can be provided by another person or entity, then the objecting person or entity shall notify the Personal Service Contract Review Board and the agency that published the proposed sole source contract with a detailed explanation of why the personal or professional service is not a sole source service.

"(v)1. If the agency determines after review that the personal or professional service in the proposed sole source contract can be provided by another person or entity, then the agency must withdraw the sole source contract publication from the procurement portal website and submit the procurement of the personal or professional service to an advertised competitive bid or selection process.

"2. If the agency determines after review that there is only one (1) source for the required personal or professional service, then the agency may appeal to the Personal Service Contract Review Board. The agency has the burden of proving that the personal or professional service is only provided by one (1) source.

"3. If the Personal Service Contract Review Board has any reasonable doubt as to whether the personal or professional service can only be provided by one (1) source, then the agency must submit the procurement of the personal or professional service to an advertised competitive bid or selection process. No action taken by the Personal Service Contract Review Board in this appeal process shall be valid unless approved by the chairman and two (2) other members of the Personal Service Contract Review Board present and voting.

"(vi) The Personal Service Contract Review Board shall prepare and submit a quarterly report to the House of Representatives and Senate Committees on Accountability, Efficiency and Transparency that details the sole source contracts presented to the Personal Service Contract Review Board and the reasons that the Personal Service Contract Review Board approved or rejected each contract. Such quarterly reports shall also include the documentation and memoranda required in subsection (5) of this section. An agency that submitted a sole source contract shall be prepared to explain the sole source contract to each committee by December 15 of each year upon request by the committee."

Amendment Notes —

The first 2017 amendment (ch. 309), effective March 9, 2017, inserted "any contracts for entertainers and/or performers at the Mississippi State Fairgrounds entered into by the Mississippi Fair Commission" near the end of the first sentence of (3)(a).

The second 2017 amendment (ch. 400), effective January 1, 2018, rewrote the section to abolish the Personal Service Contract Review Board and delete provisions regarding its creation, membership and powers and duties.

Cross References —

Contracts for personal and professional services awarded or executed by state agencies are not exempt from Mississippi Public Records Act of 1983, see § 25-1-100.

Administrative Procedures Act, see § 25-43-1.101 et seq.

OPINIONS OF THE ATTORNEY GENERAL

If professional engineering services and consultation relating to energy efficiency projects under § 31-7-14 do not involve the purchase of commodities, equipment, or furniture or the performance of construction, public advertisement and bids are not required; such contracts may come under the jurisdiction of the Personal Service Contract Review Board, pursuant to § 25-9-120. 1998 Miss. Op. Att'y Gen. 631.

§ 25-9-121. State service; status of permanent or certified employees under prior systems.

The state service, as defined by Section 25-9-107, shall consist of all positions now existing in the state departments, agencies and institutions or hereafter established, except those included in the nonstate service by this chapter. Such positions shall be covered by the state personnel system. Any officer or employee who has acquired a valid permanent status under the Mississippi Coordinated Merit System Council existing on February 1, 1981, shall continue in such status and shall not be required to take further or new examinations in order to retain such status. Any officer or employee who has been certified by the Mississippi Classification Commission and appointed by a state agency head as of February 1, 1981, shall continue in such status and shall not be required to take further or new examinations in order to retain such status.

HISTORY:

Laws, 1980, ch. 303, § 8(1), eff from and after February 1, 1981.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the text of this section was corrected by substituting "...February 1, 1981..." for "...the effective date of this chapter..."

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-123. Nonstate service; exclusion of positions covered by prior systems.

The nonstate service, as defined by Section 25-9-107, shall consist of all positions in the departments, agencies and institutions of state government not included in the state service under this chapter and shall not be subject to the rules and regulations of the state personnel system. No position existing on February 1, 1981, which is covered by the Mississippi Coordinated Merit System Council shall be excluded from the state service, unless such position is specifically excluded by this chapter.

HISTORY:

Laws, 1980, ch. 303, § 8(2), eff from and after February 1, 1981.

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-125. Temporary assignment of state service employees to nonstate service.

A state service employee, with the consent of the head of the department, agency or institution and the concurrence of the state personnel director, may be placed on a leave of absence for purposes of accepting an assignment in the nonstate service for a period not to exceed one (1) year, subject to rules adopted by the board.

HISTORY:

Laws, 1980, ch. 303, § 8(3), eff from and after February 1, 1981.

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-126. Furlough of federally funded employees.

In the event that federal funds for the funding of programs of any state agency shall be restricted or limited, the administrative board of such agency or agency administrative head shall have the authority to furlough rather than dismiss employees in accordance with rules and regulations established by the State Personnel Board.

HISTORY:
Laws, 1991, ch. 600, § 1, eff from and after July 1, 1991.

§ 25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions; exemption of personnel actions of certain state agencies from State Personnel Board procedures for limited time period; operating state vehicle without license good cause grounds for dismissal; male state employees required to register with selective service.

(1) No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system, may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the State Personnel Board complying with due process of law; and any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting his compensation or employment status are not true or are not sufficient grounds for the action taken; provided, however, that this provision shall not apply (a) to persons separated from any department, agency or institution due to curtailment of funds or reduction in staff when such separation is in accordance with rules and regulations of the state personnel system; (b) during the probationary period of state service of twelve (12) months; and (c) to an executive officer of any state agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

(2) The operation of a state-owned motor vehicle without a valid Mississippi driver's license by an employee of any department, agency or institution that is included under this chapter and that is subject to the rules and regulations of the state personnel system shall constitute good cause for dismissal of such person from employment.

(3) Beginning July 1, 1999, every male between the ages of eighteen (18) and twenty-six (26) who is required to register under the federal Military Selective Service Act, 50 USCS App. 453, and who is an employee of the state shall not be promoted to any higher position of employment with the state until he submits to the person, commission, board or agency by which he is employed satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act. The documentation shall include a signed affirmation under penalty of perjury that the male employee has complied with the requirements of the Military Selective Service Act.

(4) For a period of two (2) years beginning July 1, 2014, the provisions of subsection (1) shall not apply to the personnel actions of the State Department

of Education that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2014, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The State Superintendent of Public Education and the State Board of Education shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

It is not the intention or effect of this section to include any school attendance officer in any exemption from coverage under the State Personnel Board policy or regulations, including, but not limited to, termination and conditions of employment.

(5)(a) For a period of two (2) years beginning July 1, 2015, the provisions of subsection (1) shall not apply to the personnel actions of the Department of Corrections, and all employees of the department shall be classified as nonstate service during that period. However, any employee hired after July 1, 2015, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment.

(b) Additionally, for a period of one (1) year beginning July 1, 2016, the personnel actions of the Commissioner of the Department of Corrections shall be exempt from State Personnel Board rules, regulations and procedures in order to give the commissioner flexibility in making an orderly, effective and timely reorganization and realignment of the department.

(c) The Commissioner of Corrections shall consult with the Office of the Attorney General before personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(6) Through July 1, 2019, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Human Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, 2019, by the department shall meet the criteria of the State Personnel Board as it presently exists for employment. The Executive Director of Human Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(7) Through July 1, 2019, the provisions of subsection (1) of this section shall not apply to the personnel actions of the Department of Child Protection Services that are subject to the rules and regulations of the State Personnel Board, and all employees of the department shall be classified as nonstate service during that period. Any employee hired on or after July 1, 2019, by the division shall meet the criteria of the State Personnel Board as it presently exists for employment. The Commissioner of Child Protection Services shall consult with the Office of the Attorney General before taking personnel actions authorized by this section to review those actions for compliance with applicable state and federal law.

(8) Any state agency whose personnel actions are exempted in this section from the rules, regulations and procedures of the State Personnel Board shall file with the Lieutenant Governor, the Speaker of the House of Representatives, and the members of the Senate and House Accountability, Efficiency, Transparency Committees an annual report no later than July 1, 2016, and each year thereafter while under the exemption. Such annual report shall contain the following information:

(a) The number of current employees who received an increase in salary during the past fiscal year and the amount of the increase;

(b) The number of employees who were dismissed from the agency or otherwise adversely affected as to compensation or employment status during the past fiscal year, including a description of such adverse effects; and

(c) The number of new employees hired during the past fiscal year and the starting salaries of each new employee.

HISTORY:

Laws, 1980, ch. 303, § 9(1); Laws, 1994, ch. 523, § 2; Laws, 1999, ch. 411, § 2; Laws, 2014, ch. 491, § 1; Laws, 2015, ch. 437, § 1; Laws, 2016, ch. 494, § 5; Laws, 2016, ch. 495, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Section 5 of Chapter 494, Laws of 2016, effective from and after July 1, 2016, (approved May 13, 2016, 10:10 a.m.), amended this section. Section 1 of Chapter 495, Laws of 2016, effective from and after July 1, 2016 (approved May 13, 2016, 10:13 a.m.), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Editor's Notes —

Laws of 2004, ch. 595, § 13 provides:

"SECTION 13. (1) For the period beginning upon the effective date of this section and through June 30, 2005, the personnel actions of the Mississippi Department of Corrections regarding employees at the central offices of the department, the State Penitentiary at Parchman and the Central Correctional Facility in Rankin County shall be exempt from State Personnel Board procedures. However, all new employees of the Department of Corrections at those locations shall meet the criteria of the State Personnel Board that presently exists for employment. Whenever an employee at any of those locations is dismissed or involuntarily terminated under the authority of this section during that period of time, that employee's position shall be eliminated.

"(2) The Department of Corrections shall consult with the Office of the Attorney General before taking personnel actions permitted by this section to review those actions for compliance with applicable state and federal law."

The Military Selective Service Act, 50 USCS App. 453, referred to in this section, was renumbered 50 USCS § 3802 as part of the 2015 editorial reclassification of Title 50 and Title 50 Appendix.

Laws of 2016, ch. 494, § 8 provides:

"SECTION 8. Section 1 of this act [codified as Section 43-26-1] shall take effect and be in force from and after its passage [May 13, 2016], and Sections 2 through 7 of this act [amending Sections 43-15-111, 25-3-39, 25-9-120, 25-9-127, 25-53-1, and 25-53-5, respectively] shall take effect and be in force from and after July 1, 2016."

Cross References —

Duty and function of State Personnel Board to appoint an employee appeals board to deal with certain personnel matters, see § 25-9-129.

Intent of Sections 25-9-127 through 25-9-131 to supercede and replace any existing statutory procedure conflicting in whole or in part which provides for the discharge of state employees in any state agency, see § 25-9-131.

Judicial review of final decisions of employee appeals board, see § 25-9-132.

Action by public employee to recover civil fines and other penalties from agency for taking action against employee for disclosing information to investigative agency or body, see § 25-9-177.

Documentation of selective service registration required prior to employment of males between ages 18 and 26, see § 25-9-351.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Applicability of this section to dismissal of members of the highway safety patrol, see § 45-3-17.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction.
3. Property interest.
4. Evidence.
5. Remedies.

1. In general.

Employee was not denied due process because the employer, an agency, dismissed him for violation of a different offense than listed in the notice, because the offense he was dismissed for was nearly identical, the appellate court not being able to discern any substantive difference between the two, and the employee's notice provided him with ample notice of the conduct and nature of the charge for which he faced discipline. Miss. Dep't of Wildlife, Fisheries & Parks v. Bradshaw, 196 So. 3d 1075, 2016 Miss. App. LEXIS 430 (Miss. Ct. App. 2016).

While Laws of 2004, ch. 595, § 13 (Section 13) had an indirect effect on Miss. Code Ann. § 25-9-127(1) by suspending it for a specified period of time, it required no reference to § 25-9-127(1) for an understanding of its meaning and scope; thus, it qualified as an amendment by implication, which was complete in itself and was not violative of Miss. Const. Art. 4, § 61, and the employee's argument that Section 13 was unconstitutional was not persuasive. Hemba v. Miss. Dep't of Corr., 998 So. 2d 1003, 2009 Miss. LEXIS 1 (Miss. 2009).

Statute contemplated an inquiry into whether the alleged offense, even if it took place, was of sufficient gravity to warrant the imposition of the discipline imposed. Miss. State Dep't of Health v. Hogue, 801 So. 2d 794, 2001 Miss. App. LEXIS 511 (Miss. Ct. App. 2001).

In a proceeding to suspend a police officer, the burden of proof was properly placed on the police officer to establish that the reasons for his suspension were either not true or were not sufficient grounds for suspension. Department of Fin. & Admin. v. Reese, 751 So. 2d 1189, 1999 Miss. App. LEXIS 608 (Miss. Ct. App. 1999).

After accepting hearing officer's findings of fact, Employee Appeals Board (EAB) improperly set aside termination of Department of Corrections (DOC) employee who had received package from penitentiary post office which contained items normally sent to prisoners and then failed to report package to security or internal affairs as required by DOC policy; such employee was unfit to work for DOC in that she had demonstrated propensity to smuggle packages to criminals, given hearing officer's findings that employee knew package was not hers in that it was of type sent to inmates and that employee asked co-worker to deliver package to housing unit for inmates, rather than turn it in to her supervisors. Johnson v. Mississippi Dep't of Corrections, 682 So. 2d 367, 1996 Miss. LEXIS 531 (Miss. 1996).

Neither hearing officer nor Employee Appeals Board (EAB), which accepted hearing officer's findings, properly allocated burden of proof in employee disciplinary proceeding, where hearing officer required state employer, rather than employee, show that reason for discharge of employee was true. Mississippi Dep't of Corrections v. McClee, 677 So. 2d 732, 1996 Miss. LEXIS 286 (Miss. 1996).

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(1)(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

2. Jurisdiction.

The Employee Appeals Board had jurisdiction to hear a grievance filed by a staff attorney for the Department of Human Services in which racial discrimination was alleged; although he was hired on an at-will basis, he was still an attorney employed by the state. Mississippi Dep't of Human Servs. v. Baum, 730 So. 2d 58, 1998 Miss. LEXIS 559 (Miss. 1998).

3. Property interest.

Even though a legislative amendment extinguished the employee's property rights as to his job, he was not denied due process where the Mississippi Department of Corrections terminated more than 160 employees; Laws of 2004, ch. 595, § 13 (Section 13) affected a general class of people due to a mandated reorganization of the department, Miss. Code Ann. § 25-9-127(1), and thus, the employee was entitled to due process only as provided under Section 13. Hemba v. Miss. Dep't of Corr., 998 So. 2d 1003, 2009 Miss. LEXIS 1 (Miss. 2009).

Although a property interest may be created in a particular job, that property interest is generally limited to the financial remuneration of that job, and no property interest lies in the particular duties and responsibilities of a job. Lollar v. Baker, 196 F.3d 603, 1999 U.S. App. LEXIS 31993 (5th Cir. Miss. 1999).

4. Evidence.

State employee's termination was reversed because the employee's due process rights were violated when (1) no facts in evidence supported the misconduct charged, (2) the termination was based on the employee's statements indicating possible misconduct on other occasions, and (3) there was no other direct proof of the charged misconduct. Ray v. Miss. Dep't of Pub. Safety, 172 So. 3d 199, 2014 Miss. App. LEXIS 598 (Miss. Ct. App. 2014), rev'd, 172 So. 3d 182, 2015 Miss. LEXIS 415 (Miss. 2015).

Mississippi Employee Appeals Board's (EAB) reinstatement of a Mississippi Department of Corrections employee was affirmed as the employee met his burden under Miss. Code Ann. §§ 25-9-127(1) (Rev. 2010) and 25-9-131(1) (Rev. 2010) of proving that the alleged acts leading to his termination did not occur. Thus, the EAB's decision was supported by substantial evidence. Miss. Dep't of Corr. v. Pennington, 59 So. 3d 636, 2011 Miss. App. LEXIS 206 (Miss. Ct. App. 2011).

Where there was overwhelming evidence that appellant, while employed by appellee Mississippi Department of Education, copied software promotional materials to craft what were supposed to be generic software specifications and that increased the likelihood that a particular software would be selected, in violation of employee policy, and there was evidence that appellant was seen at a vocational conference in a booth for that software wearing one of the software company's name tags, the Mississippi Employee Appeals Board erred in reinstating appellant. Bynum v. Miss. Dep't of Educ., 906 So. 2d 81, 2004 Miss. App. LEXIS 1130 (Miss. Ct. App. 2004), cert. denied, 904 So. 2d 184, 2005 Miss. LEXIS 398 (Miss. 2005).

Even though a terminated employer was a nonstate service employee under Miss. Code Ann. § 25-9-107, the employee was properly reinstated because deference was given to the Employee Appeals Board sitting en banc and substantial evidence, pursuant to the standard of review of Miss. Code Ann. § 25-9-132, showed that the employee's termination was politically motivated in violation of Miss. Code Ann. § 25-9-127 and Miss. Code Ann. § 25-9-103. Miss. DOT v. Rutland, 965 So. 2d 696, 2007 Miss. App. LEXIS 133 (Miss. Ct. App.), cert. denied, 964 So. 2d 508, 2007 Miss. LEXIS 540 (Miss. 2007).

Mississippi Employee Appeals Board (EAB) hearing officer acted outside the power afforded to the EAB by finding defendant Mississippi Department of Education restricted from reclassifying an employee's past conduct as terminable in light of new evidence and then terminating the employee because the EAB must affirm a termination unless the employee has shown that the reasons for the termination were not true or were insufficient to merit the termination. Bynum v. Miss. Dep't of Educ., 906 So. 2d 81, 2004 Miss. App. LEXIS 1130 (Miss. Ct. App. 2004), cert. denied, 904 So. 2d 184, 2005 Miss. LEXIS 398 (Miss. 2005).

Court erred in upholding a state employee's reinstatement with a department of corrections on the ground that improper political influence caused the employee to be terminated; no evidence supported the charge that the employee was fired because of political pressure due to the employee's work for a defeated sheriff. Reviewing court could not find any evidence on which the Employee Appeals Board could have relied to conclude that the employee was terminated because of the employee's political work. Miss. Dep't of Corr. v. Smith, 883 So. 2d 124, 2004 Miss. App. LEXIS 449 (Miss. Ct. App.), cert. denied, 882 So. 2d 772, 2004 Miss. LEXIS 1208 (Miss. 2004).

Where an employee of the Mississippi State Department of Health (MSDH), allegedly made sexual advances upon a 16-year-old patient, the patient's statement was the basis for the employee's termination. MSDH's failure to reinterview the patient constituted insufficient agency fact-finding prior to the termination decision, and once the Mississippi Employee Appeals Board (EAB) hearing officer rejected the patient's statement, it was reasonable for the hearing officer to infer that the reasons given for the employee's termination were not true; the EABs reversal of the employee's termination was was not arbitrary and capricious. Davis v. Miss. State Dep't of Health, 856 So. 2d 485, 2003 Miss. App. LEXIS 286 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 674 (Miss. 2003).

The Employee Appeals Board properly set aside the suspension of a capitol police officer for his failure to patrol the interior of the Old Capitol Building on the night of an attempted burglary where there was evidence that the officer was unaware that it was standard operating procedure to patrol the interior of the Old Capitol Building. Department of Fin. & Admin. v. Reese, 751 So. 2d 1189, 1999 Miss. App. LEXIS 608 (Miss. Ct. App. 1999).

5. Remedies.

Where the plaintiffs demonstrated that they had been adversely affected as to compensation or employment status within the meaning of subsection (1), the remedy granted by the Employee Appeals Board, which included the prospective removal of unauthorized job requirements and an order that they receive consideration for reclassification (or, arguably, for any posted Psychologist I positions) based strictly on their own merits and on the fact that they both met the minimum requirements to fill such a position, was sufficient; the board was not required to order that the plaintiffs automatically be advanced to the next available Psychologist I slots. Shird v. Mississippi State Dep't of Mental Health, 2000 Miss. App. LEXIS 374 (Miss. Ct. App. Aug. 15, 2000), reversed by, remanded by 785 So. 2d 275, 2001 Miss. LEXIS 87, Shird v. Miss. Dep't of Mental Health, 785 So. 2d 275, 2001 Miss. LEXIS 87 (Miss. 2001).

RESEARCH REFERENCES

ALR.

Determination as to good faith in abolition of public officer or employment subject to civil service or merit system. 87 A.L.R.3d 1165.

Rights of state and municipal public employees in grievance proceedings. 46 A.L.R.4th 912.

Nonsexual Misconduct or Irregularity as Amounting to "Conduct Unbecoming an Officer," Justifying Police Officer's Demotion or Removal or Suspension from Duty. 19 A.L.R.6th 217.

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 54 et seq.

4 Am. Jur. Legal Forms 2d, Civil Service § 57:12, (form of notice of intention to dismiss civil service employee).

CJS.

67 C.J.S., Officers §§ 63-84.

Lawyers' Edition.

Public employee's right of free speech under Federal Constitution's First Amendment – Supreme Court cases. 97 L. Ed. 2d 903.

§ 25-9-129. Employee appeals board; membership; terms of office; compensation.

The State Personnel Board shall appoint an employee appeals board, which shall consist of three (3) hearing officers, for the purpose of holding hearings, compiling evidence and rendering decisions on appeals of state agency action adversely affecting the employment status or compensation of any employee in the state service. Hearings before the employee appeals board may be conducted by an individual hearing officer or by the board en banc, as provided in State Personnel Board rules. The original appointments shall be effective February 1, 1981, as follows:

(a) One (1) hearing officer from the first Supreme Court district, for a term of two (2) years to expire February 1, 1983;

(b) One (1) hearing officer from the second Supreme Court district, for a term of three (3) years to expire February 1, 1984; and

(c) One (1) hearing officer from the third Supreme Court district for a term of four (4) years to expire February 1, 1985.

Upon expiration of the foregoing terms, members shall be appointed by the board for terms to expire February 1 each four (4) years thereafter, and may be reappointed. The members of the employee appeals board shall be paid an appropriate fee, to be established by the attorney general, and they shall be reimbursed for any actual and necessary expenses incurred while hearing an appeal as authorized by general law.

HISTORY:

Laws, 1980, ch. 303, § 9(2); Laws, 1982, ch. 390, § 3, eff from and after July 1, 1982.

Cross References —

Intent of Sections 25-9-127 through 25-9-131 to supercede and replace any existing statutory procedure conflicting in whole or in part which provides for the discharge of state employees in any state agency, see § 25-9-131.

Costs for recording hearings before employee appeals board and contracting with court reporters, see § 25-9-132.

Manner of judicial review of employee appeals board decisions, see § 25-9-132.

Action by public employee to recover civil fines and other penalties from agency for taking action against employee for disclosing information to investigative agency or body, see § 25-9-177.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

JUDICIAL DECISIONS

1. In general.

An appeal regarding retirement benefits and payment for unused compensated leave were not grievable issues. Moody v. Mississippi Dep't of Pub. Safety/Highway Patrol, 729 So. 2d 1249, 1999 Miss. LEXIS 13 (Miss. 1999).

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(1)(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

The statutory civil service appeals process was adequate to enable a discharged employee to assert claims that he was denied state and federal constitutional rights. The employee could have presented before the Employee Appeals Board (EAB) every ground for relief that he asserted, including his federal claims under 42 USC § 1983. The more relaxed administrative appellate process before the EAB is quite conducive to a full airing of an employee's constitutional claim. On judicial review, the circuit court is specifically charged, pursuant to § 25-9-132, to consider whether the EAB's action abridged "some . . . constitutional right of the employee." On final review, the employee's administrative remedies thus exhausted, he or she may pursue before the circuit court all avenues of relief that § 1983 makes available. If an aggrieved state employee were allowed to bring a § 1983 claim in chancery court after exhausting the administrative remedies and judicial review thereof, there would be a duplication of process. Hood v. Mississippi Dep't of Wildlife Conservation, 571 So. 2d 263, 1990 Miss. LEXIS 702 (Miss. 1990), overruled in part, E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

§ 25-9-131. Proceedings before employee appeals board; judicial review; legislative intent.

(1) Any employee in the state service may appeal his dismissal or other

action adversely affecting his employment status to the employee appeals board created herein. The proceedings before the employee appeals board shall be de novo, and the employee shall be afforded all applicable safeguards of procedural due process. The employee appeals board shall have the authority to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence upon a showing of relevancy or materiality of the witnesses or documents to an appeal pending before the board. Subpoenas so issued shall be delivered to the sheriff of the county where they are to be executed, and the sheriff shall cause them to be served. In case of the failure of any person to comply with any subpoena issued by the board, the board or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as a contempt thereof. The employee appeals board may modify the action of the department, agency or institution but may not increase the severity of such action on the employee. Such appointing authority shall promptly comply with the order issued as a result of the appeal to the employee appeals board.

(2) Any employee aggrieved by a final decision of the employee appeals board shall be entitled to judicial review thereof in the manner provided by law.

(3) It is the intent of Sections 25-9-127 through 25-9-131 to supercede and replace any existing statutory procedure conflicting in whole or in part which provides for the discharge of state employees in any state agency.

HISTORY:

Laws, 1980, ch. 303, § 9(3)-(5); Laws, 1983, ch. 349, eff from and after July 1, 1983.

Cross References —

Duty and function of State Personnel Board to appoint an employee appeals board to deal with certain personnel matters, see § 25-9-129.

Judicial review of employee appeals board decisions, see § 25-9-132.

Action by public employee to recover civil fines and other penalties from agency for taking action against employee for disclosing information to investigative agency or body, see § 25-9-177.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Burden of proof.

1. In general.

State employee's termination was reversed because the employee's due process rights were violated when (1) no facts in evidence supported the misconduct charged, (2) the termination was based on the employee's statements indicating possible misconduct on other occasions, and (3) there was no other direct proof of the charged misconduct. Ray v. Miss. Dep't of Pub. Safety, 172 So. 3d 199, 2014 Miss. App. LEXIS 598 (Miss. Ct. App. 2014), rev'd, 172 So. 3d 182, 2015 Miss. LEXIS 415 (Miss. 2015).

Mississippi Employee Appeals Board (EAB) was a creature of statute, and nowhere in the statutory scheme was the EAB empowered to award attorneys' fees, and the EAB's denial of the employee's request for reimbursement of legal fees was proper. Miss. Dep't of Human Servs. v. McNeel, 10 So. 3d 444, 2009 Miss. LEXIS 274 (Miss. 2009).

State employee could bring suit under 42

U.S.C.S. § 1983 alleging that he was terminated in retaliation for exercising freedom of speech, although he did not exhaust administrative remedies as contemplated by Miss. Code Ann. §§ 25-9-131, 25-9-132; he was not restricted to the grievance procedure on federal constitutional claims. E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

Where the Mississippi Employee Appeals Board reversed the Mississippi Department of Corrections's decision to suspend its employee after a full evidentiary hearing, the circuit court erred by reversing that decision; credibility of the testimony was for the Board to judge and was a factor in its decision, and the circuit court had no right to re-evaluate credibility. Hemba v. Miss. Dep't of Corr., 848 So. 2d 909, 2003 Miss. App. LEXIS 567 (Miss. Ct. App. 2003).

Where an employee of the Mississippi State Department of Health (MSDH), allegedly made sexual advances upon a 16-year-old patient, the patient's statement was the basis for the employee's termination. MSDH's failure to reinterview the patient constituted insufficient agency fact-finding prior to the termination decision, and once the Mississippi Employee Appeals Board (EAB) hearing officer rejected the patient's statement, it was reasonable for the hearing officer to infer that the reasons given for the employee's termination were not true; the EABs reversal of the employee's termination was was not arbitrary and capricious. Davis v. Miss. State Dep't of Health, 856 So. 2d 485, 2003 Miss. App. LEXIS 286 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 674 (Miss. 2003).

Employee Appeals Board has only limited authority under Miss. Code Ann. § 25-9-131 (1999), and the awarding of attorneys' fees is not one of its enumerated powers. Miss. Empl. Sec. Comm'n v. Culbertson, 832 So. 2d 519, 2002 Miss. LEXIS 409 (Miss. 2002).

Evidence supported termination of State Highway patrol officer who issued additional citations against traffic offenders, some for actual offenses and some alleging totally false offenses, after releasing the offender from a traffic stop; evidence did not support the officer's allegations of a quota system or that the officer's termination was actually in retaliation for the officer's attempts to stop the withholding of federal taxes from the officer's paycheck. Wilburn v. Miss. Highway Safety Patrol, 795 So. 2d 575, 2001 Miss. App. LEXIS 360 (Miss. Ct. App. 2001).

State employees improperly denied an opportunity to be considered for promotion are not limited in remedy to being considered for new openings that become available in the position in question since the court had the authority to order the state agency to declare vacancies and consider the employees for those positions. Shird v. Miss. Dep't of Mental Health, 785 So. 2d 275, 2001 Miss. LEXIS 87 (Miss. 2001).

The Employee Appeals Board has jurisdiction to declare a vacancy. Tillmon v. Mississippi State Dep't of Health, 749 So. 2d 1017, 1999 Miss. LEXIS 359 (Miss. 1999).

The Employee Appeals Board does not have the authority to declare a statute unconstitutional. Moody v. Mississippi Dep't of Pub. Safety/Highway Patrol, 729 So. 2d 1249, 1999 Miss. LEXIS 13 (Miss. 1999).

Employee Appeals Board (EAB) lacked statutory authority to transfer pending state civil service employment matter to circuit court; statutes creating EAB indicated that EAB's ultimate authority was limited to issuing final decision in which case appellate, as compared to original, jurisdiction of circuit court could be invoked by aggrieved employee to review EAB's decision. Wright v. White, 693 So. 2d 898, 1997 Miss. LEXIS 160 (Miss. 1997), overruled in part, E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

State Personnel Board (SPB) rule providing that Employee Appeals Board (EAB) may not alter action of agency if agency acted in accordance with SPB published policies, rules and regulations does not conflict with statute providing EAB with authority to modify decision of state agency; statute does not provide any guidance as to under what circumstances EAB may modify agency's action, and SPB has statutory authority to make rules and regulations. Johnson v. Mississippi Dep't of Corrections, 682 So. 2d 367, 1996 Miss. LEXIS 531 (Miss. 1996).

After accepting hearing officer's findings of fact, Employee Appeals Board (EAB) improperly set aside termination of Department of Corrections (DOC) employee who had received package from penitentiary post office which contained items normally sent to prisoners and then failed to report package to security or internal affairs as required by DOC policy; such employee was unfit to work for DOC in that she had demonstrated propensity to smuggle packages to criminals, given hearing officer's findings that employee knew package was not hers in that it was of type sent to inmates and that employee asked co-worker to deliver package to housing unit for inmates, rather than turn it in to her supervisors. Johnson v. Mississippi Dep't of Corrections, 682 So. 2d 367, 1996 Miss. LEXIS 531 (Miss. 1996).

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(1)(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115[Repealed], 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

The statutory civil service appeals process was adequate to enable a discharged employee to assert claims that he was denied state and federal constitutional rights. The employee could have presented before the Employee Appeals Board (EAB) every ground for relief that he asserted, including his federal claims under 42 USCS § 1983. The more relaxed administrative appellate process before the EAB is quite conducive to a full airing of an employee's constitutional claim. On judicial review, the circuit court is specifically charged, pursuant to § 25-9-132, to consider whether the EAB's action abridged "some . . . constitutional right of the employee." On final review, the employee's administrative remedies thus exhausted, he or she may pursue before the circuit court all avenues of relief that § 1983 makes available. If an aggrieved state employee were allowed to bring a § 1983 claim in chancery court after exhausting the administrative remedies and judicial review thereof, there would be a duplication of process. Hood v. Mississippi Dep't of Wildlife Conservation, 571 So. 2d 263, 1990 Miss. LEXIS 702 (Miss. 1990), overruled in part, E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

Pursuant to the directive in § 25-9-131(3) that the appeals procedure there provided "replace any existing statutory procedure," the appeals procedure set forth therein is the employee's exclusive remedy. Hood v. Mississippi Dep't of Wildlife Conservation, 571 So. 2d 263, 1990 Miss. LEXIS 702 (Miss. 1990), overruled in part, E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

Circuit court was without jurisdiction to order the reinstatement of a park manager who had filed no appeal bond with his petition to the circuit court for appeal and for writ of certiorari. Grand Gulf Military Monument Com. v. Cox, 492 So. 2d 287, 1986 Miss. LEXIS 2529 (Miss. 1986).

2. Burden of proof.

Mississippi Employee Appeals Board's (EAB) reinstatement of a Mississippi Department of Corrections employee was affirmed as the employee met his burden under Miss. Code Ann. §§ 25-9-127(1) (Rev. 2010) and 25-9-131(1) (Rev. 2010) of proving that the alleged acts leading to his termination did not occur. Thus, the EAB's decision was supported by substantial evidence. Miss. Dep't of Corr. v. Pennington, 59 So. 3d 636, 2011 Miss. App. LEXIS 206 (Miss. Ct. App. 2011).

Employee Appeals Board's decision in a Miss. Code Ann. § 25-9-131 (Rev. 1999) hearing to reinstate a terminated security guard was reversed as arbitrary and capricious where the guard failed in his burden of persuasion to show the board that the charges that he had committed unjustified acts of violence against inmates and had falsified records about an altercation between inmates and guards were untrue. Miss. Dep't of Corr. v. Harris, 831 So. 2d 1190, 2002 Miss. App. LEXIS 695 (Miss. Ct. App. 2002).

RESEARCH REFERENCES

ALR.

Power of civil service body on own motion and without notice or hearing to reconsider, modify, vacate, or set aside order relating to dismissal of employee. 16 A.L.R.2d 1126.

Rights of state and municipal public employees in grievance proceedings. 46 A.L.R.4th 912.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Negligent discharge of employee. 53 A.L.R.5th 219.

Award of "front pay" under § 7 of Age Discrimination in Employment Act of 1967 (29 USCS § 626). 74 A.L.R. Fed. 745.

Am. Jur.

15A Am. Jur. 2d, Civil Service §§ 92, 93 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Forms 21 et seq. (unlawful dismissal of public employees from positions).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Forms 91 et seq. (remedies of discharged employees).

4 Am. Jur. Legal Forms 2d, Civil Service

§ 57:13, (claim for damages for wrongful discharge of civil service employee).

§ 25-9-132. Judicial review of employee appeals board decisions.

Any employee aggrieved by a final decision of the employee appeals board shall be entitled to judicial review thereof in the manner provided in this section.

(1) An appeal may be taken by such employee to the circuit court of the principal county of the employee's employment or the Circuit Court of the First Judicial District of Hinds County, by filing a petition with the clerk of such court and executing and filing bond payable to the State of Mississippi with sufficient sureties to be approved by the clerk of the court, in the penalty of Five Hundred Dollars ($500.00), conditioned upon the payment of all costs of appeal, including the cost of preparing the transcript of the hearing before the employee appeals board. The petition and bond shall be filed within thirty (30) days of the receipt of the final decision of the employee appeals board. Upon approval of the bond, the clerk of the court shall notify the employee appeals board, which shall prepare its record in the matter and transmit it to the circuit court.

(2) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the employee appeals board or hearing officer to determine if the action of the employee appeals board is unlawful for the reason that it was:

(a) Not supported by any substantial evidence;

(b) Arbitrary or capricious; or

(c) In violation of some statutory or constitutional right of the employee.

(3) No relief shall be granted based upon the court's finding of harmless error by the board in complying with the procedural requirements of Sections 25-9-127 through 25-9-129; provided, however, in the event that there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.

(4) Any party aggrieved by action of the circuit court may appeal to the Supreme Court in the manner provided by law.

(5) In each controversy in which the employee appeals board assumes jurisdiction, the State Personnel Board shall assess the respondent state agency a reasonable fee to defray the cost of recording the hearing. The State Personnel Board is hereby authorized to contract with certified court reporters to record hearings before the employee appeals board.

HISTORY:

Laws, 1984, ch. 468, eff from and after passage (approved May 10, 1984).

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Statute of limitations.
3. Newly discovered evidence.

1. In general.

Substantial evidence supported a decision from the Mississippi Employee Appeal Board that affirmed a state employee's termination after he was convicted of stalking and simple assault as a conviction was A sufficient basis for discharge. Terry v. Miss. Div. of Medicaid, 75 So. 3d 1100, 2011 Miss. App. LEXIS 295 (Miss. Ct. App.), cert. denied, 76 So. 3d 169, 2011 Miss. LEXIS 564 (Miss. 2011).

Mississippi Employee Appeals Board did not err in denying the employee's request for travel reimbursement and personal-leave credit, continuing professional education expenses, reimbursement of legal fees, reimbursement for additional income taxation, and an independent calculation of the monies owed; the EAB could reimburse the employee for personal funds expended on medical insurance during the period of her wrongful termination. Miss. Dep't of Human Servs. v. McNeel, 10 So. 3d 444, 2009 Miss. LEXIS 274 (Miss. 2009).

Decision of the Mississippi employee appeals board upholding the employee's termination was supported by substantial evidence and was not arbitrary and capricious where the testimony supported the finding that the employee attempted to restrain a mentally retarded client who was in a wheelchair by placing unauthorized force on the back of the client's neck and arm. Payne v. Miss. Dep't of Mental Health, 964 So. 2d 582, 2007 Miss. App. LEXIS 581 (Miss. Ct. App. 2007).

Mississippi Department of Corrections (MDOC) did not act in an arbitrary or capricious manner in dismissing a prison counselor where she wrote a letter to an inmate with a smiley face, signed off as "your mom," and made other statements that seemed to evince an improper personal relationship. Counselor failed to demonstrate that the reasons given for her termination were not true, and the decision of the employee appeals board and the circuit court, that said conduct did not warrant dismissal, was reversed. Miss. Dep't of Corr. v. Maxwell, 913 So. 2d 1013, 2005 Miss. App. LEXIS 315 (Miss. Ct. App. 2005).

Even though a terminated employer was a nonstate service employee under Miss. Code Ann. § 25-9-107, the employee was properly reinstated because deference was given to the Employee Appeals Board sitting en banc and substantial evidence, pursuant to the standard of review of Miss. Code Ann. § 25-9-132, showed that the employee's termination was politically motivated in violation of Miss. Code Ann. § 25-9-127 and Miss. Code Ann. § 25-9-103. Miss. DOT v. Rutland, 965 So. 2d 696, 2007 Miss. App. LEXIS 133 (Miss. Ct. App.), cert. denied, 964 So. 2d 508, 2007 Miss. LEXIS 540 (Miss. 2007).

Substantial evidence, in the form of testimony from supervisor's and coworkers, existed of improper actions by an employee in the operation of a dragline crane so that the Mississippi Employee Appeals Board acted arbitrarily and capriciously in ordering the employee to be reinstated. Pannell v. Tombigbee River Valley Water Mgmt. Dist., 909 So. 2d 1115, 2005 Miss. LEXIS 373 (Miss. 2005).

Termination of the employee's employment was proper where the decision was supported by substantial evidence and it was neither arbitrary or capricious, Miss. Code Ann. § 25-9-132(2). There was sufficient evidence of the employee's threatening or coercing employees and engaging in acts of conduct plainly related to job performance of such nature that to continue the employee in the assigned position could constitute negligence of the agency's duties to other state employees such as to warrant dismissal. Miss. Transp. Comm'n v. Anson, 879 So. 2d 958, 2004 Miss. LEXIS 621 (Miss. 2004).

State employee could bring suit under 42 U.S.C.S. § 1983 alleging that he was terminated in retaliation for exercising his freedom of speech, although he did not exhaust administrative remedies as contemplated by Miss. Code Ann. §§ 25-9-131, 25-9-132; he was not restricted to the grievance procedure on federal constitutional claims. E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

Hearing officer for the Mississippi Employees Appeals Board (EAB) observed the testimony of witnesses and their demeanor and found that the employee (a social worker) was not professionally involved with the subject child at the time the employee's husband was appointed guardian of that child, and that adopting the child was never discussed; substantial evidence supported the decision of the EAB, and the employee was entitled to reinstatement with back pay. Miss. Dep't of Human Servs. v. McNeel, 869 So. 2d 1013, 2004 Miss. LEXIS 340 (Miss. 2004).

Where an employee of the Mississippi State Department of Health (MSDH), allegedly made sexual advances upon a 16-year-old patient, the patient's statement was the basis for the employee's termination. MSDH's failure to reinterview the patient constituted insufficient agency fact-finding prior to the termination decision, and once the Mississippi Employee Appeals Board (EAB) hearing officer rejected the patient's statement, it was reasonable for the hearing officer to infer that the reasons given for the employee's termination were not true; the EABs reversal of the employee's termination was supported by substantial evidence. Davis v. Miss. State Dep't of Health, 856 So. 2d 485, 2003 Miss. App. LEXIS 286 (Miss. Ct. App.), cert. denied, 860 So. 2d 315, 2003 Miss. LEXIS 674 (Miss. 2003).

The circuit court improperly reversed a decision of a hearing officer and the full board of the Employee Appeals Board, which had terminated the appellee's employment based on his drug test results, where the court relied on evidence not found in the record made before the Employee Appeals Board. Mississippi Dep't of Corrections v. Gooden, 766 So. 2d 783, 2000 Miss. App. LEXIS 344 (Miss. Ct. App. 2000).

The court did not abuse its discretion in denying a corrections officer's request for additional time to file a brief due to financial constraints and the fact that his attorney was murdered. Holly v. Mississippi Dep't of Corrections, 722 So. 2d 632, 1998 Miss. LEXIS 527 (Miss. 1998).

Employee Appeals Board (EAB) lacked statutory authority to transfer pending state civil service employment matter to circuit court; statutes creating EAB indicated that EAB's ultimate authority was limited to issuing final decision in which case appellate, as compared to original, jurisdiction of circuit court could be invoked by aggrieved employee to review EAB's decision. Wright v. White, 693 So. 2d 898, 1997 Miss. LEXIS 160 (Miss. 1997), overruled in part, E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

An appeal from a circuit court order reversing an order of the Employee Appeals Board, which granted a state service employee's motion to collaterally estop her employer-the Mississippi Department of Corrections (MDOC)-from relitigating factual issues decided in the employee's unemployment claim, would be dismissed for lack of jurisdiction since no appeal to the circuit court by an administrative agency is authorized by § 25-9-132, and the MDOC did not comply with the statutory requisites for certiorari pursuant to §§ 11-51-93 and 11-51-95 where the MDOC filed only a brief in support of review and failed to file a petition supported by affidavit. Bertucci v. Mississippi Dep't of Corrections, 597 So. 2d 643, 1992 Miss. LEXIS 157 (Miss. 1992).

Although the circuit court did not have the authority, under § 25-9-132, to hear the Department of Wildlife Conservation's (DWC) appeal of a final decision of the Employee Appeals Board (EAB), limited judicial review via writ of certiorari was available to the DWC under § 11-51-93, since the EAB is a "tribunal inferior" within the meaning of § 11-51-95. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

The statutory civil service appeals process was adequate to enable a discharged employee to assert claims that he was denied state and federal constitutional rights. The employee could have presented before the Employee Appeals Board (EAB) every ground for relief that he asserted, including his federal claims under 42 USCS § 1983. The more relaxed administrative appellate process before the EAB is quite conducive to a full airing of an employee's constitutional claim. On judicial review, the circuit court is specifically charged, pursuant to § 25-9-132, to consider whether the EAB's action abridged "some . . . constitutional right of the employee." On final review, the employee's administrative remedies thus exhausted, he or she may pursue before the circuit court all avenues of relief that § 1983 makes available. If an aggrieved state employee were allowed to bring a § 1983 claim in chancery court after exhausting the administrative remedies and judicial review thereof, there would be a duplication of process. Hood v. Mississippi Dep't of Wildlife Conservation, 571 So. 2d 263, 1990 Miss. LEXIS 702 (Miss. 1990), overruled in part, E. Miss. State Hosp. v. Callens, 892 So. 2d 800, 2004 Miss. LEXIS 361 (Miss. 2004).

State employee, by not appealing to Circuit Court decision of hearing officer's dismissal of employee's case for lack of jurisdiction, specifically agreed with hearing officer that his was non-grievable matter. Mississippi Forestry Com. v. Piazza, 513 So. 2d 1242, 1987 Miss. LEXIS 2838 (Miss. 1987).

2. Statute of limitations.

The court properly rejected the contention that the 30 day period to appeal did not begin to run because the plaintiff was never given access to his appropriate administrative remedy; although the plaintiff argued that the Appeals Board misconstrued his status and that, therefore, his administrative remedies were never exhausted, his appeal period began to run when the Appeals Board affirmed his termination. Carter v. State Dep't of Corrections, 722 So. 2d 141, 1998 Miss. LEXIS 450 (Miss. 1998).

3. Newly discovered evidence.

A corrections officer was not entitled to a remand of his case for presentation of newly discovered evidence pertaining to his discharge since the alleged new evidence, his acquittal of criminal charges arising from the incident which led to his discharge, occurred several months before the final order below was entered. Holly v. Mississippi Dep't of Corrections, 722 So. 2d 632, 1998 Miss. LEXIS 527 (Miss. 1998).

RESEARCH REFERENCES

ALR.

Rights of state and municipal public employees in grievance proceedings. 46 A.L.R.4th 912.

§ 25-9-133. Recommendations and position audits by board.

(1) The board shall recommend policies and procedures for the efficient and economical use of employment positions. The board shall report to the State Fiscal Management Board and the Legislative Budget Office recommendations for the number of employment positions and costs within each department, agency or institution. Such recommendation shall include the job title and salary of each position. The board shall conduct periodic position audits within each department, agency or institution to ensure the effective and efficient use of all personnel resources and to determine compliance with organization and staffing plans by agencies as presented by Section 25-9-115(n).

(2) No person shall be employed by any agency for any period for any purpose except in an employment position authorized by legislative appropriation or by the body authorized by law to escalate budgets and approve employment positions under the guidelines established by the Legislature. Each employment position so authorized shall be classified and assigned a pay range on the basis of actual job content, according to the State Classification Plan.

HISTORY:

Laws, 1980, ch. 303, § 10(1); Laws, 1981, ch. 504, § 12; Laws, 1984, ch. 488, § 173; Laws, 1985, ch. 404, § 2, eff from and after July 1, 1985.

Editor's Notes —

Section 25-9-115 referred to in (1) was repealed by operation of law on June 30, 2003, by a repealer contained in Laws of 2000, ch. 544, § 1, eff from and after June 30, 2000.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-134. Establishment of program to encourage and recognize excellence in government.

(1) The Legislature finds (a) that effective state and local governmental institutions are essential in the maintenance and development of public administration in an increasingly complex and interdependent society; (b) that since numerous governmental activities administered by district and local governments are related to a statewide purpose and are financed in part by state funds, a state interest exists in a high caliber of public service in state, district and local governments; and (c) that the quality of public service at all

levels of government can be improved by the development of innovative systems of public administration.

(2) The State Personnel Board is hereby authorized and directed to establish a program to encourage and recognize excellence, innovation and diversity on the part of state, district and local governmental entities in the design, execution and management of their own administrative procedures. The State Personnel Board shall establish by rule and regulation procedures for evaluating said examples of improvement in public administration, and shall provide for an annual awards program to recognize excellence in government. The board may establish categories of governmental service in order to recognize these achievements.

(3) Nominations for awards under the program of excellence in government prescribed herein shall be made to the State Personnel Director by the governing authority or board of the governmental entity employing the particular individual or group of individuals to be recognized. Such nominations shall be made at such time or times and shall contain such information as the State Personnel Board may prescribe. All nominations shall be submitted by the State Personnel Director to the Governor for review, comments and recommendation at least sixty (60) days prior to final evaluation by the State Personnel Board. An explanation in writing shall be sent to the Governor in the event the State Personnel Board does not concur with recommendations of the Governor in approving or disapproving said nominations.

(4) Nominations for awards under the program of excellence in government shall set forth clear and practicable actions for the improvement of particular aspects of technical or administrative procedure, such as:

(a) Establishment of personnel systems of general or special functional coverage to meet the needs of urban, suburban or rural governmental jurisdictions that may not be able to provide career inducements to well qualified professional, administrative and technical personnel;

(b) Strengthening one or more major areas of public administration, such as personnel recruitment, personnel training, personnel development and payroll administration; or

(c) Increasing intergovernmental cooperation with respect to such matters as personnel interchange, personnel recruiting, manpower utilization and interchange and fringe benefits.

(5) As part of the program of excellence in government, the State Personnel Board shall authorize and establish guidelines for state agencies to accept and present cash awards and bonuses as part of any federally funded employee awards incentive. The guidelines shall authorize state employees to compete for federal incentives and authorize state agencies to accept federal funds earmarked for incentives. All federal awards and bonuses received by state agencies shall not be designated as part of the agency's yearly budget for the purpose of receiving state appropriations.

(6) The State Personnel Board may evaluate a nominee under the program of excellence in government and recommend a monetary award for those suggestions which improve management of technical or administrative

procedures resulting in bona fide cost reduction for the state or local governmental entity. Upon approval of such an award by the board, the State Personnel Board may notify the State Auditor or the local governmental authority, as the case may be, who shall pay the award to the employee upon receipt of the proper requisition.

HISTORY:

Laws, 1985, ch. 404, § 1; Laws, 1987, ch. 389, eff from and after July 1, 1987.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-135. State personnel director to review payrolls and collect statistical information; retention of payroll warrants for agency violations.

(1) The state personnel director shall review the payroll of each department, agency and institution for conformity with state personnel system rules and regulations and determine whether the payroll conforms to the said rules and regulations and is in compliance with legislatively authorized employment positions. The board shall implement a central personnel record system which shall be used as a basis for payment of salaries of state employees.

(2) In order to furnish the Governor, the State Legislature and the general public with statistical information which can be used in planning departmental programs and budgeting, each department, agency and institution whose employees are in the state and nonstate service shall submit such payroll and other essential personnel and organizational data as may be prescribed and approved by the board to the state personnel director, who shall compile and consolidate reports pertaining to the number of personnel, salaries, length of service, type of work, distribution of employees by departments, agencies and institutions, and other personnel information as may be deemed necessary by the board.

(3) If the personnel director shall determine that any agency as defined by this chapter shall have violated any provision of this chapter, he shall prepare a written report of findings to be certified by the State Personnel Board and furnish the report to the state auditor of public accounts. The state auditor of public accounts shall withhold issuance of any payroll warrant determined in violation of this chapter as certified by the board and shall take such action as required by law to initiate an immediate audit of any agency found in violation for the purpose of civil recovery of funds misspent.

HISTORY:
Laws, 1980, ch. 303, § 10(2), (3); Laws, 1981, ch. 504, § 13, eff from and after July 1, 1981.

Editor's Notes —
Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —
Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-137. Reorganization and consolidation of prior systems.

The Mississippi Classification Commission shall be responsible for a plan to orderly reorganize and consolidate the existing classification commission staff and the Mississippi Coordinated Merit System Council staff. The reorganization and consolidation plan shall be completed by February 1, 1981. The state capitol commission shall provide such office space as required to accommodate the reorganization and consolidation.

HISTORY:
Laws, 1980, ch. 303, § 11, eff from and after passage (approved February 8, 1980).

Editor's Notes —
Section 29-5-1, as added by Laws of 1984, chapter 488, § 7, provided, at subsection (2) therein, that the words "capitol commission" appearing in the laws of the state shall be construed to mean the bureau of capitol facilities of the office of general services. Thereafter, Laws of 1989, Chapter 544, § 24, amended section 7-1-451 to provide that the term "Office of General Services" appearing in any law of the state shall mean the Department of Finance and Administration.

Cross References —
Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-139. Status of employees, equipment and supplies of prior systems; transfer of funds appropriated to prior systems.

(1) Employees of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council holding positions on February 1, 1981, shall be employees of the State Personnel Board on February 1, 1981; and all offices, equipment, supplies, services, programs and other activities of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council are hereby made offices, equipment, supplies, services, programs and other activities of the State Personnel Board.

(2) The State Personnel Board may, with the approval of the commission of budget and accounting require the transfer of funds appropriated for the use of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council. Said funds shall be transferred by the state auditor to a separate account in the state treasury. The auditor shall issue his warrants upon requisitions signed by the proper person or officer designated by the board.

HISTORY:

Laws, 1980, ch. 303, § 12, eff from and after February 1, 1981.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-141. Funding for State Personnel Board; proration of costs; funding of agency expenses; deposit of monies into State General Fund.

The State Personnel Board may, in the discretion of the Legislature, operate from special funds provided from department, agency and institution assessments. If the Legislature adopts the assessment procedure, the cost of those operations shall be prorated among all departments, agencies and institutions, based upon the number of employment positions authorized and/or serviced by the board, and the departments, agencies and institutions shall pay their share of the cost upon receipt of billing from the board. However, for the period beginning July 1, 2010, and ending June 30, 2011, the annual agency assessment authorized in this section shall not be less than One Hundred Twenty Dollars ($120.00) nor more than One Hundred Twenty-seven Dollars ($127.00) per State Personnel Board PIN number.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 1980, ch. 303, § 13; Laws, 2010, ch. 562, § 11; Laws, 2016, ch. 459, § 42, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-143. Status of employees in merit positions and exempt positions.

Unless otherwise provided in this chapter, each personnel system officer or employee in a merit position affected by this chapter shall be entitled to all rights which he possessed under the Mississippi Classification Law and under the Mississippi Coordinated Merit System Council in a merit position before February 1, 1981. All previously exempt employment positions created by separate laws are hereby included in the provisions of this chapter, except as excluded in Section 25-9-107.

HISTORY:

Laws, 1980, ch. 303, § 14, eff from and after February 1, 1981.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the text at the end of the first sentence was corrected by substituting "...February 1, 1981..." for "...the effective date of this chapter..."

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-145. Official coercion prohibited; penalties.

(1) No elected state official, elected state district official, appointed state official or member of the judiciary shall use his official authority or influence to coerce, by threat of discharge from employment or otherwise, the political action of a person or body.

(2) Any official who violates this section shall be subject to removal from his position by proceedings initiated in the circuit court by the Office of the Attorney General, on his own motion or on relation of another; and any official so found in violation of subsection (1) of this section shall be guilty of a misdemeanor in office and imprisoned for a term not less than one (1) year or more than five (5) years or fined not more than Five Thousand Dollars ($5,000.00), or both. Funds appropriated for the position from which any official is removed under the provisions of this chapter shall not thereafter be used to pay the salary of such individual.

HISTORY:

Laws, 1980, ch. 303, § 15, eff from and after passage (approved February 8, 1980).

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(1)(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. Gill v. Mississippi Dep't of Wildlife Conservation, 574 So. 2d 586, 1990 Miss. LEXIS 789 (Miss. 1990).

RESEARCH REFERENCES

ALR.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

§ 25-9-147. Variable compensation plan; annual review and report; designation of plan as "Colonel Guy Groff State Variable Compensation Plan."

The State Personnel Board shall review on an annual basis the variable compensation plan adopted by the Legislature at the Regular Session of 1981 and subsequently implemented by the State Personnel Board. Each state department or agency subject to the variable compensation plan shall prepare an annual written report under the direction of the head of that department or agency outlining the impact which the plan has had on that department or agency during the preceding fiscal year. Such department or agency report shall be submitted to the State Personnel Board and shall become a part of the board's annual review of the variable compensation plan. After conducting its annual review of the plan and studying the report of each department or agency, the State Personnel Board shall prepare a written legislative report, to be submitted to the members of the Mississippi Legislature prior to January 1 of each year. This written report shall accurately reflect the effect of the variable compensation plan on the various departments or agencies subject to the plan. From and after July 1, 1985, the plan shall be named the "Colonel Guy Groff State Variable Compensation Plan".

HISTORY:

Laws, 1982, ch. 311; Laws, 1985, ch. 362, eff from and after July 1, 1985.

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-148. Annual report regarding increases in compensation, other than salary increases authorized by Legislature.

Before September 1, 1996, and before September 1 of every year thereafter, the State Personnel Board shall prepare a written report to be submitted to the Chairmen of the House of Representatives Appropriations and Fees and Salaries of Public Officers Committees, the Chairmen of the Senate Appropriations and Fees, Salaries and Administration Committees and the Legislative Budget Office specifically describing every increase in compensation, other than salary increases authorized by the Legislature, or additional compensation that was awarded to any state officer, administrator, executive head, employee or employees during the next preceding fiscal year. For each increase or additional compensation awarded, the report shall include no less than the following information: the annual salary of the officer, administrator, executive head or employee before the increase; the total amount of the increase or additional compensation; the justification for the increase or additional compensation; the effective date of the increase or additional compensation; and the source of the additional compensation, including federal or private funds.

HISTORY:

Laws, 1996, ch. 328, § 1, eff from and after July 1, 1996.

§ 25-9-149. Discriminatory practices prohibited.

It is the intent of the Legislature that no person seeking employment in state service, as defined in Section 25-9-107, Mississippi Code of 1972, or employed in state service, as defined in Section 25-9-107, Mississippi Code of 1972, shall be discriminated against on the basis of race, color, religion, sex, national origin, age or handicap.

HISTORY:

Laws, 1984, ch. 488, § 333, eff from and after July 1, 1984.

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

JUDICIAL DECISIONS

ANALYSIS

1. Gender discrimination.
2. Nondiscriminatory reason for decision.

1. Gender discrimination.

Substantial evidence supported the decision of the Mississippi Employee Appeals Board that an employee was not "clearly" more qualified for a promotion than a master sergeant because the sergeant scored higher than the employee on the interview since he provided superior answers to the interview questions. Kirk v. Miss. Dep't of Pub. Safety, 235 So. 3d 144, 2017 Miss. App. LEXIS 324 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 44 (Miss. 2018).

2. Nondiscriminatory reason for decision.

Relative quality of candidates' answers to interview questions designed to test their knowledge relevant to the open position is a legitimate, nondiscriminatory reason for an employer's decision Kirk v. Miss. Dep't of Pub. Safety, 235 So. 3d 144, 2017 Miss. App. LEXIS 324 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 44 (Miss. 2018).

Circuit court properly affirmed the decision of the Mississippi Employee Appeals Board, which upheld a hearing officer's order denying an employee's gender discrimination claim because the employer articulated a legitimate, nondiscriminatory reason for its decision to promote master sergeant rather than the employee; the employer's stated reason for promoting the sergeant rather than the employee was that the sergeant scored higher on his interview. Kirk v. Miss. Dep't of Pub. Safety, 235 So. 3d 144, 2017 Miss. App. LEXIS 324 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 44 (Miss. 2018).

RESEARCH REFERENCES

ALR.

What constitutes employment discrimination on basis of "marital status" for purposes of state civil rights laws. 44 A.L.R.4th 1044.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap. 76 A.L.R.4th 310.

Validity, Construction, and Application of Americans with Disabilities Act (42 U.S.C. § 12112(b)(5)(A)) and Rehabilitation Act (29 U.S.C. § 791) Reasonable Accommodation Requirements to Employee's Request to Work from Home or to Change Location of Employment. 77 A.L.R. Fed. 2d 187.

Handicap as job disqualification under state legislation forbidding job discrimination on account of handicap. 78 A.L.R.4th 265.

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap. 81 A.L.R.4th 144.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap. 82 A.L.R.4th 26.

Judicial construction and application of state legislation prohibiting religious discrimination in employment. 37 A.L.R.5th 349.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Same-sex sexual harassment under state antidiscrimination laws. 73 A.L.R.5th 1.

Visual impairment as handicap or disability under state employment discrimination law. 77 A.L.R.5th 595.

Availability and Scope of Punitive Damages Under State Employment Discrimination Law. 81 A.L.R.5th 367.

Individual liability of supervisors, managers, officers or co-employees for discriminatory actions under state Civil Rights Act. 83 A.L.R.5th 1.

Who are "public employers" or "public employees" within the meaning of state whistleblower protection acts. 90 A.L.R.5th 687.

When is supervisor's or coemployee's hostile environment sexual harassment imputable to employer under state law. 94 A.L.R.5th 1.

Discrimination against pregnant employee as violation of state fair employment laws. 99 A.L.R.5th 1.

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 A.L.R.5th 623.

Who is "employee" within meaning of Age Discrimination in Employment Act (29 USCS §§ 621-634). 69 A.L.R. Fed. 700.

Reinstatement as remedy for discriminatory discharge or demotion under Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 78 A.L.R. Fed. 575.

Actions under Age Discrimination in Employment Act (29 USCS §§ 621-634) challenging hiring or retirement practices in law enforcement employment. 79 A.L.R. Fed. 373.

Job discrimination against unwed mothers or unwed pregnant women as proscribed under Pregnancy Discrimination Act (42 USCS § 2000e(k)). 91 A.L.R. Fed. 178.

Pension plan designed to induce early retirement of employees of certain age as violation of Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) or ERISA (29 USCS §§ 1001 et seq). 91 A.L.R. Fed. 296.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 93 A.L.R. Fed. 10.

Who is "employer" within meaning of Age Discrimination in Employment Act of 1967 (29 USCS § 621 et seq). 137 A.L.R. Fed. 551.

Allowance and rates of interest on backpay award under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq). 138 A.L.R. Fed. 1.

What constitutes substantial limitation on major life activity of working for purposes of Americans with Disabilities Act (42 USCS §§ 12101-12213). 141 A.L.R. Fed. 603.

What constitutes direct evidence of age discrimination in action under age discrimination in employment act (29 U.S.C.S. §§ 621 et seq.) – Post-Price Waterhouse cases. 155 A.L.R. Fed. 283.

What constitutes racial harassment in employment violative of Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.). 156 A.L.R. Fed. 1.

When is supervisor's hostile environment sexual harassment under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.) imputable to employer. 157 A.L.R. Fed. 1.

Construction and application of § 102(d) of Americans with Disabilities Act (42 U.S.C.S. § 12112(d)) pertaining to medical examinations and inquiries. 159 A.L.R. Fed. 89.

Who is recipient of, and what constitutes program or activity receiving, federal financial assistance for purposes of § 504 of Rehabilitation Act (29 U.S.C.S. § 794), which prohibits any program or activity receiving financial assistance from discriminating on basis of disability. 160 A.L.R. Fed. 297.

Propriety of treating separate entities as one for determining number of employees required by Title VII of Civil Rights Act of 1964 (42

U.S.C.S. § 2000e(b)) for action against "employer". 160 A.L.R. Fed. 441.

When are public entities required to provide services, programs, or activities to disabled individuals under Americans with Disabilities Act, 42 U.S.C.S. § 12132. 160 A.L.R. Fed. 637.

What constitutes reverse or majority gender discrimination against males violative of federal constitution or statues – private employment cases. 162 A.L.R. Fed. 273.

Action under Americans with Disabilities Act (42 U.S.C.S. §§ 12101 et seq.), to remedy alleged harassment or hostile work environment. 162 A.L.R. Fed. 603.

When does a public entity discriminate against individuals in its provision of services, programs, or activities under the Americans with Disabilities Act, 42 U.S.C.S. § 12132. 163 A.L.R. Fed. 339.

Liability of employer, under Title VII of Civil Rights Act of 1964 (42 U.S.C.S. §§ 2000e et seq.) for sexual harassment of employee by customer, client, or patron. 163 A.L.R. Fed. 445.

What constitutes "Willful" violation under age discrimination in employment act (29 U.S.C.S. §§ 626 et seq.) entitling victim to liquidate damages. 165 A.L.R. Fed. 1.

What constitutes employment discrimination by public entity in violation of Americans with Disabilities Act (ADA), 42 U.S.C.S. § 12132. 164 A.L.R. Fed. 433.

Can "at-will" employee bring action for racial discrimination under 42 U.S.C.S. § 1981. 165 A.L.R. Fed. 143.

"Bona fide employee benefit plan" exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.S. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans. 184 A.L.R. Fed. 1.

Disparate impact claims under Age Discrimination Act of 1967, §§ 2 et seq., 29 U.S.C.S. §§ 621 et seq. 186 A.L.R. Fed. 1.

Am. Jur.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Rights, Forms 81 et seq. (employment; job discrimination generally).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Rights, Forms 101 et seq. (employment; racial discrimination).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Rights, Forms 111 et seq. (employment; sexual discrimination).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Rights, Forms 131 et seq. (employment; age discrimination).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Rights, Forms 141, 151 et seq. (employment; religion and religious beliefs, physical handicap).

29 Am. Jur. Trials 1, Age Discrimination in Employment Action under ADEA.

15 Am. Jur. Proof of Facts 2d 481, Age as Bona Fide Occupational Qualification under ADEA.

33 Am. Jur. Proof of Facts 2d 71, Employer's Discriminatory Appearance Code.

36 Am. Jur. Proof of Facts 2d 249, Discrimination Against the Obese.

20 Am. Jur. Proof of Facts 3d 361, Disability Discrimination Under the Americans with Disability Act.

Law Reviews.

Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss. C. L. Rev. 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss. C. L. Rev. 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss. C. L. Rev. 255, Spring, 1991.

§ 25-9-151. Longevity service award program.

(1) There is hereby established a longevity service award program for full-time employees of the State of Mississippi.

(2) The State Personnel Board shall coordinate the design, purchase, distribution and presentation of service awards based on years of service with the State of Mississippi for full-time employees in all state agencies, boards and commissions.

(3) The longevity service awards shall be made upon attainment of ten (10), twenty (20) and thirty (30) years of full-time service in state government, and shall be the same for all personnel regardless of position or title.

(4) The State Personnel Board shall promulgate such reasonable rules and regulations as deemed necessary in carrying out the provisions of this longevity service awards program.

(5) Nothing in this section shall be construed as authorizing the giving of gifts or monetary bonuses to employees.

HISTORY:

Laws, 1990, ch. 339, § 1, eff from and after passage (approved March 12, 1990).

Cross References —

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-153. Operator of state-owned vehicle must have valid driver's license from Mississippi or contiguous state; operator of vehicle owned by state institution of higher learning must have valid driver's license of appropriate classification from any state; penalty.

(1)(a) Except as provided in paragraph (b), an employee of any state agency, department, board, commission, institution or other instrumentality of the state may not operate a state-owned motor vehicle unless such person has a valid Mississippi driver's license or a valid driver's license from a contiguous state.

(b) A person may operate a motor vehicle owned by a state institution of higher learning if they have a valid Mississippi driver's license of the appropriate classification or a valid driver's license of the appropriate classification from any state.

(2) A violation of subsection (1) of this section constitutes good cause for dismissal from employment.

HISTORY:

Laws, 1994, ch. 523, § 1; Laws, 2001, ch. 345, § 1; Laws, 2015, ch. 342, § 1, eff from and after passage (approved Mar. 13, 2015).

§ 25-9-155. Nonstate service employees to be given preference for state service positions over general public.

The State Personnel Board shall grant part-time employees, as defined in Section 25-9-107(c)(xi), who are fully qualified, and time-limited employees, as defined in Section 25-9-107(c)(xiv), and all other nonstate service employees, who are fully qualified, preference over general public applicants for state service positions in the same manner that preference is given to employees in the state service, as defined in Section 25-9-107(b), for appointment in the state service.

HISTORY:

Laws, 1994, ch. 531, § 1, eff from and after July 1, 1994.

PROTECTION OF PUBLIC EMPLOYEE FROM REPRISAL FOR GIVING INFORMATION TO INVESTIGATIVE BODY OR AGENCY

Sec.
25-9-171. Definitions.
25-9-172. Record of complaint; authority to investigate complaint; standard form for complaint; confidentiality.
25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body; reprisals and retaliatory actions; conditions for recovery of damages and other remedies.
25-9-175. Liability of agency for violating provisions.
25-9-177. Actions to recover civil fines and other penalties.

§ 25-9-171. Definitions.

For purposes of Sections 25-9-171 through 25-9-177, the following terms shall have the meanings ascribed to them herein:

(a) "Abuse" means acting in an arbitrary and capricious manner that adversely affects the accomplishment of a function of any governmental entity.

(b) "Governmental entity" means a board, commission, department, office or other agency of the state or a political subdivision of the state.

(c) "Employee" means any individual employed or holding office in any department or agency of state or local government.

(d) "Improper governmental action" means any action by an employee which is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment:

(i) Which is in violation of any federal or state law or regulation, is an abuse of authority, results in substantial abuse, misuse, destruction, waste, or loss of public funds or public resources; or

(ii) Which is of substantial and specific danger to the public health or safety; or

(iii) Which is discrimination based on race or gender.

"Improper governmental action" does not include personnel actions for which other remedies exist, including, but not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state personnel system or local personnel policies, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any personnel action which may be taken under federal or state law.

(e) "Misuse" means an illegal or unauthorized use.

(f) "Personnel action" means an action that affects an employee's promotion, demotion, transfer, work assignment or performance evaluation.

(g) "State investigative body" shall mean the Attorney General of the State of Mississippi, the State Auditor, the Mississippi Ethics Commission, the Joint Legislative Committee on Performance Evaluation and Expenditure Review or any other standing committee of the Legislature, or any district attorney of the State of Mississippi.

(h) "Use of official authority or influence" includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation or other disciplinary action.

(i) "Waste" means an unnecessary or unreasonable expenditure or use.

(j) "Whistleblower" means an employee who in good faith reports an alleged improper governmental action to a state investigative body, initiating an investigation. For purposes of the provisions of Sections 25-9-171 through 25-9-177, the term "whistleblower" also means an employee who in good faith provides information to a state investigative body, or an employee who is believed to have reported alleged improper governmental action to a state investigative body or to have provided information to a state investigative body but who, in fact, has not reported such action or provided such information.

HISTORY:

Laws, 1991, ch. 454, § 1; Laws, 1999, ch. 424, § 1, eff from and after passage (approved Mar. 18, 1999).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the second sentence of (j) was corrected by substituting "... Sections 25-9-171 through 25-7-177..." for "...this act..."

JUDICIAL DECISIONS

1. State investigative body.

Although a federal court did not actually entertain any Miss. Code Ann. § 25-9-171 et seq., whistleblower claims that may have been asserted by several prison officers who alleged that they were retaliated against for reporting that a co-worker beat an inmate, it appeared that the officers' whistleblower claims would fail because they made the report to their supervisor rather than to a state investigative body as defined in § 25-9-171(g). Williams v. Riley, 481 F. Supp. 2d 582, 2007 U.S. Dist. LEXIS 49990 (N.D. Miss. 2007), aff'd in part, vacated in part, 275 Fed. Appx. 385, 2008 U.S. App. LEXIS 8990 (5th Cir. Miss. 2008).

§ 25-9-172. Record of complaint; authority to investigate complaint; standard form for complaint; confidentiality.

(1) Upon receipt of a signed written complaint of alleged improper governmental action, a state investigative body shall keep a record of the complaint and shall have the authority to investigate the complaint in accordance with its powers and duties provided by the laws of the State of Mississippi.

(2) Each state investigative body shall develop and maintain a standard form for use by the whistleblower when reporting alleged improper governmental action. Such form shall require as a minimum the name, address and telephone number of the whistleblower, and a description of the alleged improper governmental action.

(3) If any state investigative body receives a complaint that contains allegations outside its expertise, then the state investigative body may refer the complaint to another state investigative body unless contrary to the laws of the State of Mississippi.

(4) In any case to which this section applies, the identity of the whistleblower shall be kept confidential unless the state investigative body determines that the information has been provided other than in good faith, or unless the confidentiality requirement conflicts with Article 1, Chapter 4 of this title, Mississippi Code of 1972.

HISTORY:

Laws, 1999, ch. 424, § 2, eff from and after passage (approved Mar. 18, 1999.).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (4) was corrected by substituting "...Article 1, Chapter 4 of this title..." for "Article 1, Chapter 4 of Title 25, Mississippi Code of 1972..."

§ 25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body; reprisals and retaliatory actions; conditions for recovery of damages and other remedies.

(1) No agency shall dismiss or otherwise adversely affect the compensation or employment status of any public employee because the public employee testified or provided information to a state investigative body whether or not the testimony or information is provided under oath.

(2) Any person who is a whistleblower, as defined in Section 25-9-171, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, is entitled to the remedies provided under Section 25-9-175. For the purpose of this section, "reprisal or retaliatory action" means, but is not limited to:

(a) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
(b) Demotion;
(c) Reduction in pay;
(d) Denial of promotion;
(e) Suspension;
(f) Dismissal; and
(g) Denial of employment.

(3) An employee who has filed a valid whistleblower complaint may not recover the damages and other remedies provided under Section 25-9-175 unless the dismissal or adverse action taken against him was the direct result of providing information to a state investigative body.

(4) Nothing in this section prohibits a governmental entity from making any decision exercising its authority to terminate, suspend or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(5) A governmental entity is not precluded from taking any action in accordance with established personnel policies against an employee who knowingly and intentionally provides false information to a state investigative body.

HISTORY:

Laws, 1991, ch. 454, § 2; Laws, 1999, ch. 424, § 3, eff from and after passage (approved Mar. 18, 1999).

Cross References —

Penalties for violation of this section, see § 25-9-175.

JUDICIAL DECISIONS

ANALYSIS

1. Applicability.
2. Protected activity.

1. Applicability.

Plaintiff former Mississippi Air National Guard service member's suit against defendant Guard officials alleging violations of the Mississippi Whistleblower Protection Act failed because Miss. Code Ann. § 25-9-175 proscribed reprisal or retaliation by a state "agency," not by one's co-workers, and provided a remedy only against the agency and the individual members of its governing board or executive director, covered only retaliation or reprisal that adversely affected an employee's compensation or employment status as provided in Miss. Code Ann. § 25-9-173, and afforded no protection for actions taken against an employee after he was no longer employed. Bryant v. Miss. Military Dep't, 519 F. Supp. 2d 622, 2007 U.S. Dist. LEXIS 52005 (S.D. Miss. 2007), affirmed by 597 F.3d 678, 2010 U.S. App. LEXIS 3221, 30 I.E.R. Cas. (BNA) 654 (5th Cir. Miss. 2010)supra.

2. Protected activity.

Employee provided no summary judgment evidence that she reported misconduct by the Mississippi Board of Pharmacy to any of the state agencies. Because the Mississippi whistle blower statutes protected employees from retaliation when they reported improper governmental action to a state investigative body, Miss. Code Ann. § 25-9-173, the employee's claims under the Mississippi whistle blower statute were dismissed. Claiborne v. Miss. Bd. of Pharm., 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

RESEARCH REFERENCES

ALR.

What constitutes activity of employee protected under state whistleblower protection statute covering employee's "report," "disclosure," "notification," or the like of wrongdoing – Sufficiency of report. 10 A.L.R.6th 531.

What constitutes activity of employee, other than "reporting" wrongdoing, protected under state whistleblower protection statute. 13 A.L.R.6th 499.

§ 25-9-175. Liability of agency for violating provisions.

Any agency which violates the provisions of Section 25-9-173 shall be liable to the public employee for back pay and reinstatement. In addition, an employee whose employment is suspended or terminated or who is subjected to adverse personnel action in violation of Section 25-9-173 is entitled to sue for injunctive relief, compensatory damages, court costs and reasonable attorney's fees; provided, however, that an employee may not recover an amount that exceeds the limitations provided in Section 11-46-15. Additionally, each member of any agency's governing board or authority may be found individually liable for a civil fine of up to Ten Thousand Dollars ($10,000.00) for each violation of Section 25-9-173. In any instance where the agency in violation of Section 25-9-173 has no governing board or authority, the agency's executive director may be found individually liable for a civil fine not to exceed Ten Thousand Dollars ($10,000.00). If the court determines that any action filed under this section by an employee is frivolous and unwarrantable, the court may award to the employer court costs and reasonable expenses, including attorney's fees, incurred in defense of actions brought by the employee under this section.

HISTORY:

Laws, 1991, ch. 454, § 3; Laws, 1999, ch. 424, § 4, eff from and after passage (approved Mar. 18, 1999).

Cross References —

Actions to recover civil fines or other remedies provided for in this section, see § 25-9-177.

JUDICIAL DECISIONS

1. Liability of others.

Plaintiff former Mississippi Air National Guard service member's suit against defendant Guard officials alleging violations of the Mississippi Whistleblower Protection Act failed because Miss. Code Ann. § 25-9-175 proscribed reprisal or retaliation by a state "agency," not by one's co-workers, and provided a remedy only against the agency and the individual members of its governing board or executive director, covered only retaliation or reprisal that adversely affected an employee's compensation or employment status as provided in Miss. Code Ann. § 25-9-173, and afforded no protection for actions taken against an employee after he was no longer employed. Bryant v. Miss. Military Dep't, 519 F. Supp. 2d 622, 2007 U.S. Dist. LEXIS 52005 (S.D. Miss. 2007), affirmed by 597 F.3d 678, 2010 U.S. App. LEXIS 3221, 30 I.E.R. Cas. (BNA) 654 (5th Cir. Miss. 2010)supra.

§ 25-9-177. Actions to recover civil fines and other penalties.

Actions to recover civil fines and other remedies provided for under Section 25-9-175 may be instituted in the Circuit Court for the First Judicial District of Hinds County or in the circuit court of the public employee's residence. In such actions, the public employee shall prove by a preponderance of the evidence that, but for his providing information or testimony to a state investigative body prior to occurrence of the dismissal or any adverse action, his dismissal or any adverse action taken against him would not have occurred. Remedies provided for herein shall be supplemental to any other remedies, judicial or administrative, provided for under law. Any administrative remedies provided for state-service employees under Sections 25-9-127 through 25-9-131, Mississippi Code of 1972, or any remedies under a grievance or appeal process of the employing governmental entity relating to suspension or termination of employment or adverse personnel action, shall not be exhausted or diminished as a result of any action taken by the employee under Sections 25-9-175 and this section, and the employee shall be required to exhaust such remedies prior to instituting an action authorized under Sections 25-9-175 and this section.

HISTORY:

Laws, 1991, ch. 454, § 4; Laws, 1999, ch. 424, § 5, eff from and after passage (approved Mar. 18, 1999.).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error near the end of the first sentence was corrected by substituting "...or in the circuit court of the public employee's residence" for "...or in the circuit court of the public employees' residence" and errors in statutory references near the end of the section were corrected by substituting "...Section 25-9-175 and this section..." for "...Sections 25-9-175 and 25-9-177."

JUDICIAL DECISIONS

1. Waiver of sovereign immunity.

Mississippi Whistleblower Protection Statute, Miss. Code Ann. § 25-9-171 et seq., required that suits thereunder be brought in circuit courts of Mississippi; the statute waived sovereign immunity only in Mississippi state courts. Bryant v. Military Dep't of Miss., 381 F. Supp. 2d 586, 2005 U.S. Dist. LEXIS 21475 (S.D. Miss. Aug. 26, 2005), affirmed by 597 F.3d 678, 2010 U.S. App. LEXIS 3221, 30 I.E.R. Cas. (BNA) 654 (5th Cir. Miss. 2010)supra.

VETERAN'S PREFERENCE

Sec.
25-9-301. Definitions.
25-9-303. Preference for veterans in appointment, promotion and layoffs; additional preference for veterans with disabilities.
25-9-305. Rules and regulations.

§ 25-9-301. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall require otherwise:

(a) "Veteran" means a person who served in the active Armed Forces of the United States for a period of ninety (90) days during a period of war or armed conflict and was granted an honorable discharge therefrom; or was discharged therefrom for a service-connected injury in less than ninety (90) days.

(b) "Disabled veteran" means a veteran who the Veterans Administration has certified to have a service-connected disability within the last ninety (90) days.

HISTORY:

Laws, 1980, ch. 346, § 1; Laws, 1991, ch. 476, § 1, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 116-120.

CJS.

82 C.J.S., Statutes § 141.

§ 25-9-303. Preference for veterans in appointment, promotion and layoffs; additional preference for veterans with disabilities.

(1) The State Personnel Board shall grant each veteran who is fully qualified preference over other applicants for an initial or promotional appointment. Disabled veterans shall be given additional preference.

(2) In establishing a layoff formula or procedure, the State Personnel Board shall grant preference to veterans and additional preference to disabled veterans.

HISTORY:

Laws, 1980, ch. 346, § 2, eff from and after February 1, 1981.

Cross References —

Reemployment preference for veterans returning to municipal civil service, see § 21-31-17.

State Personnel Board, generally, see §§ 25-9-101 et seq.

State veterans' affairs board, see §§ 35-1-1 et seq.

Miscellaneous provisions regarding war veterans, see §§ 35-3-1 et seq.

Veteran's preference for members of highway patrol, see § 45-3-15.

RESEARCH REFERENCES

ALR.

What is "cause" justifying discharge from employment of returning serviceman re-employed under § 9 of the Military Selective Service Act of 1967 (50 USCS § 3808). 9 A.L.R. Fed. 225.

Rights of non-civil service public employees, with respect to discharge or dismissal, under state veterans' tenure statutes. 58 A.L.R.2d 960.

What is "cause" justifying discharge from employment of returning serviceman re-employed under § 9 of the Military Selective Service Act of 1967 (50 USCS § 3808). 9 A.L.R. Fed. 225.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS § 2021). 83 A.L.R. Fed. 908.

Am. Jur.

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 116-120.

24 Am. Jur. Pl & Pr Forms, Veterans, Forms 11, 12.

CJS.

82 C.J.S., Statutes § 141.

§ 25-9-305. Rules and regulations.

The State Personnel Board is authorized to establish a formula or formulas by rule and regulation to implement the provisions of sections 25-9-301 et seq.

HISTORY:

Laws, 1980, ch. 346, § 3, eff from and after February 1, 1981.

Cross References —

State Personnel Board, generally, see §§ 25-9-101 et seq.

RESEARCH REFERENCES

Am. Jur.

77 Am. Jur. 2d, Veterans and Veterans' Laws §§ 116-120.

CJS.

81A C.J.S., States §§ 287–290.

82 C.J.S., Statutes § 141.

REGISTRATION UNDER MILITARY SELECTIVE SERVICE ACT

Sec.
25-9-351. Documentation of selective service registration required prior to employment of males between ages 18 and 26.

§ 25-9-351. Documentation of selective service registration required prior to employment of males between ages 18 and 26.

(1) Every male between the ages of eighteen (18) and twenty-six (26) who is required to register under the federal Military Selective Service Act, 50 USCS App. 453, and is seeking employment with the State of Mississippi shall

submit to the person, commission, board or agency to which his application is submitted satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act. The documentation shall include a signed affirmation under penalty of perjury that the male applicant has complied with the requirements of the federal selective service act.

(2) Every male between the ages of eighteen (18) and twenty-six (26) who is offered employment with the State of Mississippi shall be prohibited from being employed by the state until he submits the documentation required in subsection (1) of this section.

HISTORY:
Laws, 1999, ch. 411, § 1, eff from and after July 1, 1999.

Editor's Notes —
The Military Selective Service Act, 50 USCS App. 453, referred to in this section, was renumbered 50 USCS § 3802 as part of the 2015 editorial reclassification of Title 50 and Title 50 Appendix.

Cross References —
Promotions to be denied male state employees who fail to register with selective service, see § 25-9-127.

STATE EMPLOYEE MANAGEMENT TRAINING [REPEALED]

Sec.
25-9-401. Repealed.

§ 25-9-401. Repealed.

Repealed by its own terms, effective, July 1, 2006.

§ 25-9-401.[Laws, 2003, ch. 348, § 1, eff from and after passage (approved Mar. 12, 2003.)]

Editor's Notes —
Former § 25-9-401 established a management training program for state employees to be administered by the State Personnel Board to increase efficiency and economy in government departments by improving the management functions of agencies.

CHAPTER 11.

SOCIAL SECURITY AND PUBLIC EMPLOYEES' RETIREMENT AND DISABILITY BENEFITS

Article 1. Social Security Benefits. 25-11-1
Article 3. Additional State Retirement and Disability Benefits. 25-11-101
Article 5. Teachers' Retirement System. 25-11-201
Article 7. Supplemental Legislative Retirement Plan. 25-11-301
Article 9. Feasibility Study of Establishing Separate Retirement Plan for Volunteer Fire Fighters. 25-11-351
Article 11. Optional Retirement Program for Employees of State Institutions of Higher Learning. 25-11-401

ARTICLE 1.

SOCIAL SECURITY BENEFITS.

Sec.
25-11-1. Citation.
25-11-3. Purpose and declaration of policy.
25-11-5. Definitions.
25-11-7. Federal-state agreement.
25-11-9. Contributions by state employees.
25-11-11. Coverage of employees of political subdivisions and instrumentalities.
25-11-13. Contribution fund.
25-11-15. Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3.
25-11-17. Rules and regulations.
25-11-19. Studies and reports.
25-11-21. Former laws remain in force.

§ 25-11-1. Citation.

Articles 1 and 3 shall be known and cited as the Public Employees' Retirement Law of 1952.

HISTORY:

Codes, 1942, § 7446-25; Laws, 1952, ch. 299, § 25, eff January 1, 1953.

Cross References —

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Eligibility for membership in retirement system, see § 25-11-105.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

JUDICIAL DECISIONS

1. Equal protection.

Dismissal, for failure to state a claim, of a retired state employee's equal protection challenge to the Legislature's establishment of a supplemental retirement plan for legislators was proper; since the different treatment of retired legislators had a rational basis in the financial uncertainties they risked, the proper course in seeking a remedy was political, not judicial. Dillard v. Musgrove, 838 So. 2d 261, 2003 Miss. LEXIS 60 (Miss. 2003).

§ 25-11-3. Purpose and declaration of policy.

In order to extend to employees of the state and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of this state, subject to the limitations of Articles 1 and 3, that such steps be taken, and they are hereby expressly authorized, as to provide such protection to employees of the state and its political subdivisions and of the instrumentalities of either on as broad a basis as is permitted under applicable federal law. It is also the policy of the Legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this article is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

HISTORY:

Codes, 1942, § 7446-01; Laws, 1952, ch. 299, § 1; Laws, 1956, ch. 346, § 1, eff April 1, 1956.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

General municipal employees' retirement act, generally, see §§ 21-29-1 et seq.

Firemen's and policemen's disability relief fund, generally, see §§ 21-29-101 et seq.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Rule that closing of schools is not to affect teacher retirement benefits, see §§ 37-65-15, 37-65-113.

Old age assistance, see §§ 43-9-1 et seq.

Medical assistance for the aged, see §§ 43-13-1 et seq.

Medicaid, see §§ 43-13-101 et seq.

Mississippi employment security law, generally, see §§ 71-5-1 et seq.

Federal Aspects—

Social Security Act generally, see 42 USCS §§ 301 et seq.

RESEARCH REFERENCES

ALR.

Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment. 76 A.L.R.2d 1312.

Validity and effect of retroactive change in rate of employee's contribution to public pension fund. 78 A.L.R.2d 1197.

Effect of divorce, remarriage or annulment on widow's pension or bonus rights or social security benefits. 85 A.L.R.2d 242.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 A.L.R.3d 644.

Mandatory retirement of public officer or employees based on age. 81 A.L.R.3d 811.

Am. Jur.

60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1603, 1606, 1630.

70A Am. Jur. 2d, Social Security and Medicare §§ 1 et seq.

46 Am. Jur. Proof of Facts 2d 97, Extent of Disability Under Social Security Act.

CJS.

81 C.J.S., Social Security and Public Welfare §§ 1, 2.

§ 25-11-5. Definitions.

For the purposes of this article:

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "wages", provided such exclusion does not conflict with federal law, including federal regulations and federal administrative interpretations thereunder, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans. If any salary reduction amounts excluded from "wages" under the prior sentence are determined to be "wages" by the Social Security Administration or the Internal Revenue Service and payroll tax deficiencies are assessed, the deficiencies shall be borne by the eligible employee and the adopting state agency or local governmental entity and not by the Public Employees' Retirement System of Mississippi as state administrator.

(b) The term "employment" means any service performed by an employee in the employ of the state, any political subdivision thereof, or any instrumentality of either for such employer, except (i) service which in the absence of an agreement entered into under this article would constitute "employment" as defined in the Social Security Act; or (ii) service which under applicable federal law may not be included in an agreement between the state and the Secretary of Health, Education and Welfare entered into under this article; or (iii) service in positions covered by a retirement system established by the state or by a political subdivision or an instrumentality of either on the date the agreement referred to in Section 25-11-7 or any modification of such agreement is made applicable to the coverage group (as defined in Section 218(b)(5) of the Social Security Act) to which the employee performing such services belongs. Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with Section 218(d)(3) of that act shall be included in the term "employment" if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to Section 25-11-11(5) of this article.

Services, the compensation for which is on a fee basis, may, to the extent permitted by applicable federal law, be excluded in any plan or agreement approved under or authorized by this article.

(c) The term "employee," in addition to its usual meaning, includes an officer of a state, a political subdivision thereof, or an instrumentality of either, and all school employees.

(d) The term "board" means the Board of Trustees of the Public Employees' Retirement System of Mississippi as provided by Section 25-11-15 of this article.

(e) The term Secretary of Health, Education and Welfare includes any individual to whom the Secretary of Health, Education and Welfare has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator or any individual to whom he had delegated any such function.

(f) The term "political subdivision" includes any county, municipality, or other political subdivision within the State of Mississippi to which has been delegated certain functions of local government, and employees thereof who are eligible to become a coverage group under the terms of the Social Security Act.

(g) The term "instrumentality," when referring to an instrumentality of the state or political subdivision, includes only a juristic entity which is legally separate and distinct from the state or such subdivision and whose employees are not by virtue of their relation to such entity employees of the state or such subdivision.

(h) The term "applicable federal law" refers to such provisions of federal law (including federal regulations and requirements issued pursuant thereto), as provide for extending the benefits of Title II of the Social Security Act to employees of states, political subdivisions, and their instrumentalities.

(i) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat 620, officially cited as "The Social Security Act," as such act has been and may from time to time be amended.

(j) The term "Federal Insurance Contribution Act" means subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of Chapter 21 of the Federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by Section 1400 of such Code of 1939 and Section 3101 of such Code of 1954.

HISTORY:

Codes, 1942, § 7446-02; Laws, 1952, ch. 299, § 2; Laws, 1956, ch. 346, § 2; Laws, 1986, ch. 513, § 6; brought forward without change, Laws, 1987, ch. 345, § 6, eff from and after July 1, 1987.

Editor's Notes —

Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Cross References —

Coverage of employees of political subdivisions and instrumentalities, see § 25-11-11.

Additional definitions applicable to this article, see § 25-11-103.

Membership of retirement system, see § 25-11-105.

Application of the definitions of this section to the supplemental legislative retirement plan, see § 25-11-303.

Federal Aspects—

Section 125 of the Internal Revenue Code of 1954, see 26 USCS § 125.

Federal Insurance Contributions Act, see 26 USCS §§ 3101 et seq.

Social Security Act generally, see 42 USCS §§ 301 et seq.

Social Security Act, Title II, see 42 USCS §§ 401 et seq.

Section 218 of the Social Security Act, see 42 USCS § 418.

§ 25-11-7. Federal-state agreement.

(1) The board, with the approval of the Governor, is hereby authorized to

enter on behalf of the state into an agreement with the Secretary of Health, Education and Welfare, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any instrumentality of any one or more of the foregoing, with respect to services specified in such agreement which constitute "employment" as defined in Section 25-11-5 of this article. Such agreement may contain such provisions as the board and the Secretary of Health, Education and Welfare shall agree upon, but except as may be otherwise required by or under applicable federal law as to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(b) The state will pay to the Secretary of the Treasury at such time or times as may be prescribed by the applicable federal law or by regulation promulgated thereunder, contributions with respect to wages (as defined in Section 25-11-5 of this article) equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such modification shall be effective with respect to services in employment covered by the agreement performed after a date specified therein provided such date is not inconsistent with the applicable provision of the federal law;

(d) All services which constitute employment as defined in Section 25-11-5 and are performed in the employ of the state by employees of the state shall be covered by the agreement; and

(e) All services which (i) constitute employment as defined in Section 25-11-5, (ii) are performed in the employ of a political subdivision or in the employ of an instrumentality of either the state or a political subdivision, or both, and (iii) are covered by a plan which is in conformity with the terms of the agreement and which has been approved by the board under Section 25-11-11 shall be covered by the agreement.

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom Section 218(C)(3)(C) of the Social Security Act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and

(g) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health, Education and Welfare pursuant to Section 25-11-11(8) of this article.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, to the extent that this state may confer

authority, upon the granting of like authority by such other state or states, (i) to enter into an agreement with the Secretary of Health, Education and Welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (ii) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under Section 25-11-9(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (iii) to make payments to the secretary of the treasury in accordance with such agreement, including payment from its own funds, and otherwise to comply with such agreement. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) hereof and other provisions of this article.

HISTORY:

Codes, 1942, § 7446-03; Laws, 1952, ch. 299, § 3; Laws, 1956, ch. 346, § 3; Laws, 1958, ch. 544.

Cross References —

Coverage of employees of political subdivisions and instrumentalities, see § 25-11-11.

Contribution fund, see 25-11-13.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Federal Aspects—

Social Security Act, generally, see 42 USCS §§ 301 et seq.

Section 218 of the Social Security Act, see 42 USCS § 418.

§ 25-11-9. Contributions by state employees.

(1) Every employee of the state whose services are covered by an agreement entered into under Section 25-11-7 shall be required to pay for the period of such coverage, into the contribution fund established by Section 25-11-13, contributions, with respect to wages (as defined in Section 25-11-5 of this article), equal to the amount of tax which would be imposed by section 1400 of the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service, or his entry upon such service, after the enactment of Articles 1 and 3.

(2) The contribution imposed by this section shall be collected by the state by deducting the amount of the contributions from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the board shall prescribe.

HISTORY:

Codes, 1942, § 7446-04; Laws, 1952, ch. 299, § 4.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Contribution fund, see 25-11-13.

§ 25-11-11. Coverage of employees of political subdivisions and instrumentalities.

(1) Each political subdivision of the state and each instrumentality of the state or of a political subdivision, or of both, is hereby authorized to submit for approval by the board a plan for extending the benefits of this article, in conformity with applicable federal law, to employees of any such political subdivision or instrumentality. Each such plan or any amendment thereof shall be approved by the board if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the board, except that no such plan shall be approved unless:

(a) It is in conformity with the requirements of the applicable federal law and with the agreement entered into under Section 25-11-7;

(b) It provides that all services which constitute employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan; except that it may exclude services performed by individuals to whom Section 218(C)(3)(c) of the Social Security Act is applicable;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(d) It provides for such methods of administration of the plan by the political subdivision or instrumentality as are found by the board to be necessary for the proper and efficient administration thereof;

(e) It provides that the political subdivision or instrumentality will make such reports, in such form and containing such information, as the board may from time to time require, and comply with such provisions as the board or the secretary of health and human services may from time to time find necessary to assure the correctness and verification of such reports; and

(f) It authorizes the board to terminate the plan in its entirety in the discretion of the board if it finds that there has been a failure to comply substantially with any provision contained in such plan, such determination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the board and as may be consistent with applicable federal law.

(2) The board shall not finally refuse to approve a plan submitted under subsection (1) and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected thereby. The board's decision in any such case shall be final, conclusive, and binding unless an appeal be taken by the political subdivision or instrumentality aggrieved thereby to the Circuit Court of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil cause by certiorari.

(3)(a) Each political subdivision or instrumentality as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in Section 25-11-5 of this article,) at such time or times as the board may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the board under Section 25-11-7.

(b) Every political subdivision or instrumentality required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employees' retention in, or entry upon, employment after enactment of this article, to impose upon its employees, as to services which are covered by an approved plan, a contribution with respect to wages (as defined in Section 25-11-5 of this article), not exceeding the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Any state agency, school, political subdivision, instrumentality or any employer that is required to submit contribution payments or wage reports under any section of this chapter shall be assessed interest on delinquent payments or wage reports as determined by the board of trustees and such assessed interest may be recovered by action in a court of competent jurisdiction against such reporting agency liable therefor or may, upon due certification of delinquency and at the request of the board, be deducted from any other moneys payable to such reporting agency by any department or agency of the state.

(5) **Referenda and certification. —** The Governor is empowered to authorize a referendum, upon request of the governing body of a political subdivision or juristic entity of the state and to designate any agency or individual to supervise its conduct, in accordance with the requirements of Section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by a political subdivision or juristic entity of the state should be excluded from or included under an agreement under this article. The notice of referendum required by Section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this article.

(6) Only those persons may be allowed to vote in the referendum who are actually employed in the employment which occasioned their membership in their retirement system at the time that the referendum is offered, and a majority of the members so qualified to vote must vote in favor of the referendum in order for it to become effective.

(7) In the event of a negative vote in the referendum, no additional referendum may be held within a period of less than one (1) year; and in the event of an affirmative vote of the referendum, their agreement must be executed with the public employees' retirement system of Mississippi to cover such employees within six (6) months after the affirmative vote has been determined in the referendum.

(8) Upon receiving evidence satisfactory to him that, with respect to any such referendum, the conditions specified in Section 218(d)(3) of the Social Security Act have been met, the governor shall so certify to the secretary of health and human services.

HISTORY:

Codes, 1942, § 7446-05; Laws, 1952, ch. 299, § 5; Laws, 1956, ch. 346, § 4; Laws, 1983, ch. 449, § 1, eff from and after passage (approved March 31, 1983).

Cross References —

Firemen's and policemen's disability relief fund, see § 21-29-101.

Contribution fund, see 25-11-13.

Eligibility for membership in retirement system, see § 25-11-105.

Payment of employer contributions to public employees' retirement system for certain fee paid public officers, see § 25-11-125.

Federal Aspects—

Section 218 of the Social Security Act, see 42 USCS § 418.

OPINIONS OF THE ATTORNEY GENERAL

The Marshall County Industrial Development Authority is a unit of county government, and an employee thereof may be entitled to state retirement and other benefits accorded to county employees. 2005 Miss. Op. Att'y Gen. 550.

RESEARCH REFERENCES

Am. Jur.

60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1603, 1606, 1630.

46 Am. Jur. Proof of Facts 2d 97, Extent of Disability Under Social Security Act.

§ 25-11-13. Contribution fund.

(1) There is hereby established a special fund, separate and apart from all public moneys or funds of this state, to be known as a contribution fund, which shall be administered by the board exclusively for the purposes of this article. Such fund shall consist of and there shall be deposited in such fund: (a) All contributions, interest and penalties collected under Sections 25-11-9 and 25-11-11; (b) all moneys appropriated or otherwise contributed thereto; (c) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund; (d) interest earned upon any moneys in the fund; and (e) all sums recovered upon the bond of any official or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the board is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts, whether or not specifically designated, which are necessary to the administration thereof consistent with the provisions of this article.

(2) Withdrawals from such fund shall be made for, and solely for (A) payment of amounts required to be paid to the Secretary of the Treasury pursuant to and in accordance with an agreement entered into under Section 25-11-7 of this article; (B) payment of refunds provided for in Section 25-11-9(3) of this article; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(3) The State Treasurer shall be the ex officio treasurer and custodian of the contribution fund, shall administer such fund in accordance with the provisions of this article and the directions of the board, and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the board may prescribe pursuant thereto or pursuant to the provisions of any other applicable law of this state with respect thereto. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the contribution fund under this article.

(4) From the contribution fund the custodian of the fund shall pay to the Secretary of the Treasury of the United States such amounts and at such time or times as may be directed by the board in accordance with any agreement entered into under Section 25-11-7 and applicable federal law.

(5) The board shall submit to the Governor and the Legislative Budget Office at least ninety (90) days in advance of the beginning of each Regular Session of the State Legislature, or at such time as may be otherwise required by law, an estimate of the amounts deemed by it as necessary for appropriation to the contribution fund and for the administration of Articles 1 and 3 for each ensuing fiscal year.

(6) The board, in its discretion, may authorize or designate each agency of the state, each political subdivision of the state, and each instrumentality of the state or of a political subdivision to individually deposit for and on behalf of the state, in accordance with Section 25-11-7, social security contributions directly in the Federal Reserve Bank or any other social security contribution collection fund established by the Social Security Administration, Department of Health and Human Services, and all contributions or other payments as required under Sections 25-11-9 and 25-11-11.

HISTORY:

Codes, 1942, § 7446-06; Laws, 1952, ch. 299, § 6; Laws, 1970, ch. 522, § 1; Laws, 1984, ch. 488, § 174; Laws, 1985, ch. 325, § 1, eff from and after passage (approved March 15, 1985).

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Payment of employer contributions to public employees' retirement system for certain fee paid public officers, see § 25-11-125.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

§ 25-11-15. Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3.

(1) Board of trustees: The general administration and responsibility for the proper operation of the Public Employees' Retirement System and the federal-state agreement and for making effective the provisions of Articles 1 and 3 are vested in a board of trustees.

(2) The board shall consist of ten (10) trustees, as follows:

(a) The State Treasurer;

(b) One (1) member who shall be appointed by the Governor for a term of four (4) years, who shall be a member of the system;

(c) Two (2) members of the system having at least ten (10) years of creditable service who are state employees who are not employees of the state institutions of higher learning, who shall be elected by members of the system who are employees of state agencies and by members of the Mississippi Highway Safety Patrol Retirement System, but not by employees of the state institutions of higher learning;

(d) Two (2) members of the system having at least ten (10) years of creditable service who do not hold office in the legislative or judicial departments of municipal or county government, one (1) of whom shall be an employee of a municipality, instrumentality or juristic entity thereof, who shall be elected by members of the system who are employees of the municipalities, instrumentalities or juristic entities thereof and by members of the municipal systems and the firemen's and policemen's disability and relief funds administered by the board of trustees, and one (1) of whom shall be an employee of a county, instrumentality or juristic entity thereof, who shall be elected by members of the system who are employees of the counties, instrumentalities or juristic entities thereof;

(e) One (1) member of the system having at least ten (10) years of creditable service who is an employee of a state institution of higher learning, who shall be elected by members of the system who are employees of the state institutions of higher learning as included in Section 37-101-1. Any member of the board on July 1, 1984, who is an employee of an institution of higher learning shall serve as the member trustee representing the institutions of higher learning until the end of the term for which he or she was elected;

(f) Two (2) retired members who are receiving a retirement allowance from the system, who shall be elected by the retired members or beneficiaries receiving a retirement allowance from the system and by the retired members or beneficiaries of the municipal systems, the firemen's and policemen's disability and relief funds and the Mississippi Highway Safety Patrol Retirement System administered by the board of trustees, to serve for a term of six (6) years under rules and regulations adopted by the board to govern that election; however, any retired member of the board in office on April 19, 1993, shall serve as a retired trustee until the end of the term for which he or she was elected;

(g) One (1) member of the system having at least ten (10) years of creditable service who is an employee of any public school district or junior college or community college district that participates in the system, who shall be elected by the members of the system who are employees of any public school district or junior college or community college district; however, any member of the board on June 30, 1989, who is a certified classroom teacher shall serve as the member representing a classroom teacher until the end of the term for which the member was appointed;

(h) In the first election to be held for trustees one (1) member shall be elected for a term of two (2) years, and one (1) member for a term of four (4) years, and one (1) member for a term of six (6) years. Thereafter, their successors shall be elected for terms of six (6) years. All elections shall be held in accordance with rules and regulations adopted by the board to govern those elections and the board shall be the sole judge of all questions arising incident to or connected with the elections.

(i) Any person eligible to vote for the election of a member of the board of trustees and who meets the qualifications for the office may seek election to the office and serve if elected. For purposes of determining eligibility to seek office as a member of the board of trustees, the required creditable service in "the system" shall include each system administered by the board of trustees in which the person is a member.

The members described above and serving on the board on June 30, 1989, shall continue to serve on the board until the expiration of their terms.

(3) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. However, if the unexpired term is six (6) months or less, an election shall be held to fill the office vacated for the next succeeding full term of office, and the person so elected to fill the next full term shall be appointed by the board to fill the remainder of the unexpired term. Whenever any member who is elected to a position to represent a class of members ceases to be a member of that class, that board member is no longer eligible for membership on the board. The position shall be declared vacant, and the unexpired term shall be filled in the same manner as the office was previously filled.

(4) Each trustee shall, within ten (10) days after his or her appointment or election, take an oath of office as provided by law and, in addition, shall take an oath that he or she will diligently and honestly administer the affairs of the board, and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to Articles 1 and 3. The oath shall be signed by the member making it, certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State.

(5) Each trustee shall be entitled to one (1) vote. Six (6) members shall constitute a quorum at any meeting of the board, and a majority of those present shall be necessary for a decision.

(6) Subject to the limitations of Articles 1 and 3, the board shall establish rules and regulations for the administration of the system created by those articles and for the transaction of its business, and to give force and effect to

the provisions of those articles wherever necessary to carry out the intent and purposes of the Legislature. The cited articles are remedial law and shall be liberally construed to accomplish their purposes.

(7) Notwithstanding any other law to the contrary, in the event of a natural disaster or other occurrence that results in the failure of the retirement system's computer system or a significant disruption of the normal activities of the retirement system, the executive director of the board, or his or her deputy, shall be authorized to contract with another entity, governmental or private, during the period of the failure or disruption, for services, commodities, work space and supplies as necessary to carry out the administration of all systems and programs administered by the board. The board shall be authorized to pay the reasonable cost of those services, commodities, work space and supplies. At the meeting of the board next following the execution of a contract authorized under this subsection, documentation of the contract, including a description of the services, commodities, work space or supplies, the price thereof and the nature of the disaster or occurrence, shall be presented to the board and placed on the minutes of the board. Because of their emergency nature, purchases made under this subsection shall not be required to comply with the provisions of Section 31-7-13 or any other law governing public purchases.

(8) The computer equipment and software owned by the Public Employees' Retirement System are assets of the Trust Fund by virtue of the Constitution, Section 272-A and acquisition and operation thereof shall be under the jurisdiction of the Public Employees' Retirement System.

(9) The board shall elect a chairman and shall by a majority vote of all of its members appoint a secretary whose title shall be executive director, who shall serve at the will and pleasure of the board, who shall not be a member of the board of trustees, who shall be entitled to membership in the system, and who shall act as secretary of the board. The board of trustees shall employ such actuarial, clerical and other employees as are required to transact the business of the system, and shall fix the compensation of all employees, subject to the rules and regulations of the State Personnel Board.

(10) Each member of the board shall receive as compensation for his or her services Three Hundred Dollars ($300.00) per month. All members of the board shall be reimbursed for their necessary traveling expenses, which shall be paid in accordance with the requirements of Section 25-3-41 or other applicable statutes with respect to traveling expenses of state officials and employees on official business. All members of the board shall be entitled to be members of the system and shall be entitled to creditable service for all time served as a member of the board, except for the retired members, who shall not be entitled to be a member of the system and who shall be eligible to receive the retirement allowance and compensation for services from the system while serving as a member of the board. Members of the board who are employed in state service (as defined in Section 25-11-103) shall not be required to take annual leave from their state service employment while performing his or her official duties as a member of the board.

(11) All expenses of the board incurred in the administration of Articles 1 and 3 shall be paid from such funds as may be appropriated by the Legislature for that purpose or from administrative fees collected from political subdivisions or juristic entities of the state. Each political subdivision of the state and each instrumentality of the state or of a political subdivision or subdivisions that submit a plan for approval by the board as provided in Section 25-11-11 shall reimburse the board, for coverage into the administrative expense fund, its pro rata share of the total expense of administering Articles 1 and 3 as provided by regulations of the board.

(12) The Lieutenant Governor may designate two (2) Senators and the Speaker of the House of Representatives may designate two (2) Representatives to attend any meeting of the Board of Trustees of the Public Employees' Retirement System. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend the meetings of the board. The legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

HISTORY:

Codes, 1942, § 7446-07; Laws, 1952, ch. 299, § 7; Laws, 1956, ch. 346, § 5; Laws, 1966, ch. 617, § 1; Laws, 1973, ch. 450, § 1; Laws, 1977, ch. 450, § 1; Laws, 1984, ch. 488, §§ 307 and 308; Laws, 1989, ch. 513, § 1; Laws, 1990, ch. 553, § 1; Laws, 1991, ch. 513, § 1; Laws, 1993, ch. 617, § 1; Laws, 2004, ch. 561, § 3; Laws, 2008, ch. 359, § 1, eff from and after July 1, 2008.

Editor's Notes —

The references to Articles 1 and 3, appearing in this section apparently refer to Articles 1 and 3 of Chapter 11 of Title 25.

Cross References —

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Board's serving as Board of the General Retirement System, see §§ 21-29-9 et seq.

Certification by Board of Trustees of action taken by governing body of municipality regarding tax reassessment following discontinuance of tax levies under General Municipal Employees' Retirement Law, see § 21-29-29.

Operational and administrative control of disability and relief funds for firemen and policemen by Board of Trustees, see §§ 21-29-105 et seq.

Allowance of traveling expenses of state officers and employees, see §§ 25-3-41 et seq.

Definition of "board" for purposes of Articles 1 and 3 of this chapter as meaning the board of trustees provided in this section, see § 25-11-103.

Eligibility for membership in retirement system, see § 25-11-105.

Payment of expenses of administering retirement system from interest earnings, see § 25-11-123.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Direction to Public Employees' Retirement System to conduct study of feasibility of establishing separate retirement plan for volunteer fire fighters, see § 25-11-351.

Highway safety patrol retirement system, generally, see §§ 25-13-1 et seq.

Mississippi Department of Information Technology Services, see § 25-53-1 et seq.

JUDICIAL DECISIONS

1. In general.

Section 57-1-3(4) [(4) now repealed], which regulates the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority [Mississippi Department of Information Technology Services], § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12 [now repealed], which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss Const Art 1 § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1 [now repealed], 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

The board of trustees had the right to challenge the validity of claimant's employment by a motor vehicle commissioner where the claimant had formerly been in state employment but had entered federal service where he continued until the time of his retirement therefrom with federal retirement benefits, when the claimant applied for a prior service certificate as a member of state retirement system and the board's right to examine was not foreclosed by the claimant obtaining employment with the motor vehicle control board two days before his resignation for federal employment became effective and two days before his retirement day was to begin. Board of Trustees of Pub. Emp. Retirement Sys. v. Lowry, 228 Miss. 555, 88 So. 2d 585 (1956), holding, that one, who had formerly been in state service where he continued until the time of his retirement therefrom with federal retirement benefits, when he again entered state service, was not entitled to membership or past service credit under the state retirement system by reason of his re-employment in violation of Code 1942, § 7446-22.

OPINIONS OF THE ATTORNEY GENERAL

In the case of the election of the Board of Trustees of the Public Employees' Retirement System, the electorate should be limited to those employees who are members of the System, and should exclude those employees who are covered for Social Security purposes only. 1991 Miss. Op. Att'y Gen. 818.

Board of Trustees of the System may employ mathematical formula based on compensation paid to create presumption that employment contract for legal school term was completed in order to support finding that service for legal school term was rendered, absent any information to the contrary being reported by employer; awarding of creditable service on this basis is conditional and if, at later date, it is determined that underlying facts are not consistent with presumption, then service credit would be recalculated and awarded in accordance with the statutory schedule. 1994 Miss. Op. Att'y Gen. 20.

While specific employment and membership in retirement system is required for appointment or election of certain members of Board of Trustees of PERS, service on Board of Trustees is not part of duties of employment and employees may not be compensated for work as employees while performing duties as Board members; such employees would be required to take annual leave from their regular employment duties while performing duties of PERS trustees and being compensated therefor in accordance with section 25-11-15(10). 1994 Miss. Op. Att'y Gen. 749.

The Board of Trustees of the Public Employees' Retirement System may further define "termination" as it specifically applies to employees of Circuit and Chancery Clerks. 2003 Miss. Op. Att'y Gen. 331.

RESEARCH REFERENCES

Am. Jur.

46 Am. Jur. Proof of Facts 2d 97, Extent of Disability Under Social Security Act.

Law Reviews.

1983 Mississippi Supreme Court Review: State legislators serving on state executive boards. 54 Miss. L. J. 46, March 1984.

§ 25-11-17. Rules and regulations.

The board shall make, adopt, and promulgate such rules and regulations, not inconsistent with the provisions of Articles 1 and 3, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under said articles.

HISTORY:
Codes, 1942, § 7446-08; Laws, 1952, ch. 299, § 8.

Cross References —
Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

RESEARCH REFERENCES

Am. Jur.
46 Am. Jur. Proof of Facts 2d 97, Extent of Disability Under Social Security Act.

§ 25-11-19. Studies and reports.

The board shall make studies concerning the problem of old-age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under Articles 1 and 3, shall submit a report to the Governor not later than the first day of February in each year covering the administration and operation of both articles during the preceding calendar year, and shall make such recommendations for amendments to said articles as it deems proper.

HISTORY:
Codes, 1942, § 7446-09; Laws, 1952, ch. 299, § 9.

§ 25-11-21. Former laws remain in force.

Nothing contained in this article shall be construed as repealing any existing law of this state providing for retirement of public employees.

HISTORY:
Codes, 1942, § 7446-10; Laws, 1952, ch. 299, § 10.

Cross References —
General municipal employees' retirement act, see §§ 21-29-1 et seq.

Firemen's and policemen's disability relief fund, see §§ 21-29-101 et seq.

ARTICLE 3.

ADDITIONAL STATE RETIREMENT AND DISABILITY BENEFITS.

Sec.	
25-11-101.	Public employees' retirement system established.
25-11-103.	Definitions.
25-11-105.	Membership.
25-11-106.	Counties responsible for employer contributions on direct payments to constables covered under Public Employees' Retirement System; constables responsible for employee contributions; county required to withhold percentage of gross fee income as estimated retirement contributions where constable responsible for both employer and employee contributions on net fee income; constables must make delinquent payments or elect not to and forfeit service credit.
25-11-106.1.	Counties responsible for employer contributions on direct payments to chancery or circuit clerks covered under Public Employees' Retirement System; chancery or circuit clerks responsible for employee contributions; chancery or circuit clerk delinquent contributions; irrevocable forfeiture of service credit for any period for which appropriate employee and employer contributions not made.
25-11-107.	Civilian employees of Mississippi National Guard as a coverage group.
25-11-109.	Creditable service.
25-11-110.	Inclusion of deceased member's period of qualified military service for vesting purposes; survivors entitled to certain additional benefits; treatment of differential wage payments as compensation under certain circumstances.
25-11-111.	Superannuation retirement.
25-11-111.1.	Payment of retirement benefits by the most appropriate means as determined by the board.
25-11-112.	Additional annual payment to retirees and beneficiaries.
25-11-113.	Disability retirement.
25-11-114.	Retirement allowance for death before retirement or death or disability in line of duty.
25-11-115.	Options.
25-11-115.1.	Designation of new spouse as beneficiary under Option 4-A; benefits payable to spouse.
25-11-115.2.	Benefit payments not knowingly to be paid directly to legally incompetent persons; representative payees.
25-11-116.	Repealed.
25-11-117.	Refund of contributions; distribution to retirement plan or account; repayment of refund.
25-11-117.1.	Persons to whom benefits payable in event of death of designated beneficiary.
25-11-118.	Retirement system authorized to accept eligible roll over distributions to repay fund or for purchase of optional service credit.
25-11-119.	Administration of Article 3.
25-11-119.1.	On-site compliance audits of employers by Public Employees' Retirement System; penalties.
25-11-120.	Hearings and appeals for persons aggrieved by administrative determination relating to eligibility, payment of benefits or calculation of creditable service.
25-11-121.	Investments.
25-11-123.	Crediting of assets; financing.
25-11-124.	Employer to pay required member contributions; tax treatment; funding; retirement treatment.
25-11-125.	Employer contributions for certain fee paid public officers.
25-11-127.	Benefits upon reemployment of retired persons.
25-11-129.	Exemptions from taxation, execution, and assignment; deductions from retirement allowances for payment of employer or system sponsored group life or health insurance.
25-11-131.	Liability for unlawful receipt and retention of payment after death of member or beneficiary; falsification of records; penalty; correction of errors in payments.
25-11-133.	Guaranty; vested right to benefits; maximum annual retirement allowance.

Sec.
25-11-135. Former laws remain in force.
25-11-137. Transfer of law enforcement officers' or firemen's funds.
25-11-139. Payment, commencement of benefits.
25-11-141. Group life and health benefits for retired persons.
25-11-143 and 25-11-145. Repealed.

§ 25-11-101. Public employees' retirement system established.

A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for officers and employees in the state service and their beneficiaries. The retirement system provided by this article shall go into operation as of the first day of the month following the effective date thereof, when contributions by members shall begin and benefits shall become payable.

This system shall be an agency of the State of Mississippi having all the powers and privileges of a public corporation and shall be known as the "Public Employees' Retirement System of Mississippi." By such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held; but in ordinary correspondence the word "system" may be used instead of the full title. After appropriation for administrative expenses and after payment of investment management fees and costs, all funds of the system shall be held in trust in the custody of the board of trustees as funds of the beneficiaries of the trust. The Joint Legislative Committee on Performance Evaluation and Expenditure Review is hereby authorized and directed to have performed random actuarial evaluations, as necessary, of the funds and expenses of the Public Employees' Retirement System and to make annual reports to the Legislature on the financial soundness of the system.

HISTORY:

Codes, 1942, § 7446-11; Laws, 1952, ch. 299, § 11; Laws, 1989, ch. 513, § 2, eff from and after passage (approved April 4, 1989).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the second sentence of the first paragraph was corrected by substituting "...provided by this article..." for "...provided by Article 3..."

Cross References —

Joint Legislative Committee on Performance Evaluation and Expenditure Review powers, see § 5-3-57.

General municipal employees' retirement act, see §§ 21-29-1 et seq.

Firemen's and policemen's disability relief fund, see §§ 21-29-101 et seq.

Deduction of portion of all tax levied for disability and relief fund for firemen and policemen to be transferred to expense fund of Public Employees' Retirement System, see § 21-29-118.

Deduction of portion of all tax levied for disability and relief fund for firemen and policemen, under Laws, 1930, Chapter 55, to be transferred to expense fund of Public Employees' Retirement System, see § 21-29-220.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Provision that, for purposes of Articles 1 and 3 of this chapter, "system" shall mean the Public Employees' Retirement System of Mississippi established and described in this section, see § 25-11-103.

Rights of employees to benefits provided by public employees' retirement system upon termination of system, see § 25-11-133.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Application of this article to the limitation on the amount of retirement allowance from the supplemental legislative retirement plan, see § 25-11-309.

Prior service regulations of this article as applicable to the supplemental legislative retirement plan, see § 25-11-315.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Board authorized to provide for payment of benefits as provided under §§ 25-13-1 et seq. to members or beneficiaries of the Highway Safety Patrol Retirement System, see § 25-13-33.

Retirement system for employees of agricultural and forestry experiment station and extension service, see § 37-113-25.

JUDICIAL DECISIONS

1. In general.

There was no dispute that the former employee suffered from various ailments such as Chron's disease, sarcoidosis and sarcoiliitis, but most of her medical records primarily dealt with various check-ups with notations such as "unremarkable." The pertinent question the employee was required to address was whether her ailments rendered her disabled as defined by Miss. Code Ann. § 25-11-113; the Public Employees' Retirement System of Mississippi (PERS) presented sufficient evidence to support its finding that she was not disabled where the only proof submitted by the former employee that she could no longer perform the usual duties of her employment was her own testimony at the hearing, which centered on neck and back pain, in other words, ailments different from what she had asserted in her claim, and where she claimed that she had resigned from her job per doctor's order, but she failed to produce documentation thereon. Public Emples. Ret. Sys. v. Burt, 919 So. 2d 1150, 2005 Miss. App. LEXIS 975 (Miss. Ct. App. 2005).

Trial court erred in reversing administrative board's decision denying disability benefits which was based on the determination that it was not supported by substantial evidence; however, the board's decision was supported by substantial evidence, was not arbitrary and capricious, was made within the board's scope or power, and did not violate the employee's constitutional rights – the employee failed to meet her burden of proving she was in fact disabled – though she may have needed her surgery, she was clearly able but unwilling to return to her job; the record clearly supported the board's order, which took into consideration all of the medical evidence, which did not establish that the employee's ailments were disabling. Public Emples. Ret. Sys. v. Stamps, 2005 Miss. LEXIS 37 (Miss. Jan. 20, 2005), op. withdrawn, sub. op., 898 So. 2d 664, 2005 Miss. LEXIS 255 (Miss. 2005).

The Public Employees' Retirement System more nearly resembles a "domestic corporation" for purposes of service of process pursuant to Rule 4(d), Miss. R. Civ. P. and, therefore, service by mail upon an agent for the System was sufficient. Public Emples. Retirement System v. Dillon, 538 So. 2d 327, 1988 Miss. LEXIS 357, 1988 Miss. LEXIS 641 (Miss. 1988).

RESEARCH REFERENCES

ALR.

Mandatory retirement of public officer or employees based on age. 81 A.L.R.3d 811.

Am. Jur.

60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1603, 1606, 1630.

§ 25-11-103. Definitions.

(1) The following words and phrases as used in Articles 1 and 3, unless a different meaning is plainly required by the context, have the following meanings:

(a) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited to his or her individual account in the annuity savings account, together with regular interest as provided in Section 25-11-123.

(b) "Actuarial cost" means the amount of funds presently required to provide future benefits as determined by the board based on applicable tables and formulas provided by the actuary.

(c) "Actuarial equivalent" means a benefit of equal value to the accumulated contributions, annuity or benefit, as the case may be, when computed upon the basis of such mortality tables as adopted by the board of trustees, and regular interest.

(d) "Actuarial tables" means such tables of mortality and rates of interest as adopted by the board in accordance with the recommendation of the actuary.

(e) "Agency" means any governmental body employing persons in the state service.

(f) "Average compensation" means the average of the four (4) highest years of earned compensation reported for an employee in a fiscal or calendar year period, or combination thereof that do not overlap, or the last forty-eight (48) consecutive months of earned compensation reported for an employee. The four (4) years need not be successive or joined years of service. In computing the average compensation for retirement, disability or survivor benefits, any amount lawfully paid in a lump sum for personal leave or major medical leave shall be included in the calculation to the extent that the amount does not exceed an amount that is equal to thirty (30) days of earned compensation and to the extent that it does not cause the employee's earned compensation to exceed the maximum reportable amount specified in paragraph (k) of this section; however, this thirty-day limitation shall not prevent the inclusion in the calculation of leave earned under federal regulations before July 1, 1976, and frozen as of that date as referred to in Section 25-3-99. In computing the average compensation, no amounts shall be used that are in excess of the amount on which contributions were required and paid, and no nontaxable amounts paid by the employer for health or life insurance premiums for the employee shall be used. If any member who is or has been granted any increase in annual salary or compensation of more than eight percent (8%) retires within twenty-four (24) months from the date that the increase becomes effective, then the board shall exclude that part of the increase in salary or compensation that exceeds eight percent (8%) in calculating that member's average compensation for retirement purposes. The board may enforce this provision by rule or regulation. However, increases in compensation in excess of eight percent (8%) per year granted within twenty-four (24) months of the date of retirement may be included in the calculation of average compensation if satisfactory proof is presented to the board showing that the increase in compensation was the result of an actual change in the position held or services rendered, or that the compensation increase was authorized by the State Personnel Board or was increased as a result of statutory enactment, and the employer furnishes an affidavit stating that the increase granted within the last twenty-four (24) months was not contingent on a promise or agreement of the employee to retire. Nothing in Section 25-3-31 shall affect the calculation of the average compensation of any member for the purposes of this article. The average compensation of any member who retires before July 1, 1992, shall not exceed the annual salary of the Governor.

(g) "Beneficiary" means any person entitled to receive a retirement allowance, an annuity or other benefit as provided by Articles 1 and 3. The term "beneficiary" may also include an organization, estate, trust or entity; however, a beneficiary designated or entitled to receive monthly payments under an optional settlement based on life contingency or under a statutory monthly benefit may only be a natural person. In the event of the death before retirement of any member who became a member of the system before July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than four (4) years of membership service credit, or who became a member of the system on or after July 1, 2007, and whose spouse and/or children are not entitled to a retirement allowance on the basis that the member has less than eight (8) years of membership service credit, and/or has not been married for a minimum of one (1) year or the spouse has waived his or her entitlement to a retirement allowance under Section 25-11-114, the lawful spouse of a member at the time of the death of the member shall be the beneficiary of the member unless the member has designated another beneficiary after the date of marriage in writing, and filed that writing in the office of the executive director of the board of trustees. No designation or change of beneficiary shall be made in any other manner.

(h) "Board" means the board of trustees provided in Section 25-11-15 to administer the retirement system created under this article.

(i) "Creditable service" means "prior service," "retroactive service" and all lawfully credited unused leave not exceeding the accrual rates and limitations provided in Section 25-3-91 et seq., as of the date of withdrawal from service plus "membership service" and other service for which credit is allowable as provided in Section 25-11-109. Except to limit creditable service reported to the system for the purpose of computing an employee's retirement allowance or annuity or benefits provided in this article, nothing in this paragraph shall limit or otherwise restrict the power of the governing authority of a municipality or other political subdivision of the state to adopt such vacation and sick leave policies as it deems necessary.

(j) "Child" means either a natural child of the member, a child that has been made a child of the member by applicable court action before the death of the member, or a child under the permanent care of the member at the time of the latter's death, which permanent care status shall be determined by evidence satisfactory to the board. For purposes of this paragraph, a natural child of the member is a child of the member that is conceived before the death of the member.

(k) "Earned compensation" means the full amount earned during a fiscal year by an employee not to exceed the employee compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one (1) year of service. Except as otherwise provided in this paragraph, the value of maintenance furnished to an employee shall not be included in earned compensation. Earned compensation shall not include any amounts paid by the employer for health or life insurance premiums for an employee. Earned compensation shall be limited to the regular periodic compensation paid, exclusive of litigation fees, bond fees, performance-based incentive payments, and other similar extraordinary nonrecurring payments. In addition, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System regardless of whether the additional employment is sufficient in itself to be a covered position. In addition, computation of earned compensation shall be governed by the following:

(i) In the case of constables, the net earnings from their office after deduction of expenses shall apply, except that in no case shall earned compensation be less than the total direct payments made by the state or governmental subdivisions to the official.

(ii) In the case of chancery or circuit clerks, the net earnings from their office after deduction of expenses shall apply as expressed in Section 25-11-123(f)(4).

(iii) In the case of members of the State Legislature, all remuneration or amounts paid, except mileage allowance, shall apply.

(iv) The amount by which an eligible employee's salary is reduced under a salary reduction agreement authorized under Section 25-17-5 shall be included as earned compensation under this paragraph, provided this inclusion does not conflict with federal law, including federal regulations and federal administrative interpretations under the federal law, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans.

(v) Compensation in addition to an employee's base salary that is paid to the employee under the vacation and sick leave policies of a municipality or other political subdivision of the state that employs him or her that exceeds the maximums authorized by Section 25-3-91 et seq. shall be excluded from the calculation of earned compensation under this article.

(vi) The maximum salary applicable for retirement purposes before July 1, 1992, shall be the salary of the Governor.

(vii) Nothing in Section 25-3-31 shall affect the determination of the earned compensation of any member for the purposes of this article.

(viii) The value of maintenance furnished to an employee before July 1, 2013, for which the proper amount of employer and employee contributions have been paid, shall be included in earned compensation. From and after July 1, 2013, the value of maintenance furnished to an employee shall be reported as earned compensation only if the proper amount of employer and employee contributions have been paid on the maintenance and the employee was receiving maintenance and having maintenance reported to the system as of June 30, 2013. The value of maintenance when not paid in money shall be fixed by the employing state agency, and, in case of doubt, by the board of trustees as defined in Section 25-11-15.

(ix) Except as otherwise provided in this paragraph, the value of any in-kind benefits provided by the employer shall not be included in earned compensation. As used in this subparagraph, "in-kind benefits" shall include, but not be limited to, group life insurance premiums, health or dental insurance premiums, nonpaid major medical and personal leave, employer contributions for social security and retirement, tuition reimbursement or educational funding, day care or transportation benefits.

(*l*) "Employee" means any person legally occupying a position in the state service, and shall include the employees of the retirement system created under this article.

(m) "Employer" means the State of Mississippi or any of its departments, agencies or subdivisions from which any employee receives his or her compensation.

(n) "Executive director" means the secretary to the board of trustees, as provided in Section 25-11-15(9), and the administrator of the Public Employees' Retirement System and all systems under the management of the board of trustees. Wherever the term "Executive Secretary of the Public Employees' Retirement System" or "executive secretary" appears in this article or in any other provision of law, it shall be construed to mean the Executive Director of the Public Employees' Retirement System.

(o) "Fiscal year" means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

(p) "Medical board" means the board of physicians or any governmental or nongovernmental disability determination service designated by the board of trustees that is qualified to make disability determinations as provided for in Section 25-11-119.

(q) "Member" means any person included in the membership of the system as provided in Section 25-11-105. For purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111, 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2007, and the person reenters state service and becomes a member of the system again on or after July 1, 2007, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2007, the member shall be considered to have become a member of the system on or after July 1, 2007, subject to the eight-year membership service requirement, as applicable in those sections. For purposes of Sections 25-11-103, 25-11-111, 25-11-114 and 25-11-115, if a member of the system withdrew from state service and received a refund of the amount of the accumulated contributions to the credit of the member in the annuity savings account before July 1, 2011, and the person reenters state service and becomes a member of the system again on or after July 1, 2011, and repays all or part of the amount received as a refund and interest in order to receive creditable service for service rendered before July 1, 2011, the member shall be considered to have become a member of the system on or after July 1, 2011.

(r) "Membership service" means service as an employee in a covered position rendered while a contributing member of the retirement system.

(s) "Position" means any office or any employment in the state service, or two (2) or more of them, the duties of which call for services to be rendered by one (1) person, including positions jointly employed by federal and state agencies administering federal and state funds. The employer shall determine upon initial employment and during the course of employment of an employee who does not meet the criteria for coverage in the Public Employees' Retirement System based on the position held, whether the employee is or becomes eligible for coverage in the Public Employees' Retirement System based upon any other employment in a covered agency or political subdivision. If or when the employee meets the eligibility criteria for coverage in the other position, then the employer must withhold contributions and report wages from the noncovered position in accordance with the provisions for reporting of earned compensation. Failure to deduct and report those contributions shall not relieve the employee or employer of liability thereof. The board shall adopt such rules and regulations as necessary to implement and enforce this provision.

(t) "Prior service" means:

(i) For persons who became members of the system before July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of four (4) years.

(ii) For persons who became members of the system on or after July 1, 2007, service rendered before February 1, 1953, for which credit is allowable under Sections 25-11-105 and 25-11-109, and which shall allow prior service for any person who is now or becomes a member of the Public Employees' Retirement System and who does contribute to the system for a minimum period of eight (8) years.

(u) "Regular interest" means interest compounded annually at such a rate as determined by the board in accordance with Section 25-11-121.

(v) "Retirement allowance" means an annuity for life as provided in this article, payable each year in twelve (12) equal monthly installments beginning as of the date fixed by the board. The retirement allowance shall be calculated in accordance with Section 25-11-111. However, any spouse who received a spouse retirement benefit in accordance with Section 25-11-111(d) before March 31, 1971, and those benefits were terminated because of eligibility for a social security benefit, may again receive his or her spouse retirement benefit from and after making application with the board of trustees to reinstate the spouse retirement benefit.

(w) "Retroactive service" means service rendered after February 1, 1953, for which credit is allowable under Section 25-11-105(b) and Section 25-11-105(k).

(x) "System" means the Public Employees' Retirement System of Mississippi established and described in Section 25-11-101.

(y) "State" means the State of Mississippi or any political subdivision thereof or instrumentality of the state.

(z) "State service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state, that elect to participate as provided by Section 25-11-105(f), including the position of elected or fee officials of the counties and their deputies and employees performing public services or any department, independent agency, board or commission thereof, and also includes all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools. Effective July 1, 1973, all nonprofessional public school employees, such as bus drivers, janitors, maids, maintenance workers and cafeteria employees, shall have the option to become members in accordance with Section 25-11-105(b), and shall be eligible to receive credit for services before July 1, 1973, provided that the contributions and interest are paid by the employee in accordance with that section; in addition, the county or municipal separate school district may pay the employer contribution and pro rata share of interest of the retroactive service from available funds. From and after July 1, 1998, retroactive service credit shall be purchased at the actuarial cost in accordance with Section 25-11-105(b).

(aa) "Withdrawal from service" or "termination from service" means complete severance of employment in the state service of any member by resignation, dismissal or discharge.

(bb) The masculine pronoun, wherever used, includes the feminine pronoun.

(2) For purposes of this article, the term "political subdivision" shall have the meaning ascribed to such term in Section 25-11-5 and shall also include public charter schools.

HISTORY:

Codes, 1942, § 7446-12; Laws, 1952, ch. 299, § 12; Laws, 1958, ch. 547, § 1; Laws, 1960, ch. 453, § 1; Laws, 1968, ch. 578, § 1; Laws, 1971, ch. 478, § 1; Laws, 1973, ch. 450, § 5; Laws, 1977, ch. 450, § 2; Laws, 1980, ch. 481, § 1; Laws, 1984, ch. 307, § 6; Laws, 1984, ch. 496, § 1; Laws, 1985, ch. 504, § 1; Laws, 1986, ch. 513, § 7; brought forward without change, Laws, 1987, ch. 345, § 7; Laws, 1989, ch. 583, § 1; Laws, 1991, ch. 513, § 2; Laws, 1992, ch. 576, § 1; Laws, 1993, ch. 617, § 2; Laws, 1994, ch. 601, § 1; Laws, 1995, ch. 624, § 1; Laws, 1996, ch. 472, § 1; Laws, 1999, ch. 544, § 17; Laws, 2000, ch. 628, § 6; Laws, 2002, ch. 627, § 5; Laws, 2004, ch. 561, § 4; Laws, 2007, ch. 407, § 1; Laws, 2008, ch. 359, § 2; Laws, 2010, ch. 389, § 2; Laws, 2010, ch. 528, § 1; Laws, 2013, ch. 414, § 1; Laws, 2016, ch. 397, § 3; Laws, 2016, ch. 420, § 10, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the penultimate sentence in paragraph (z). The words "pro rate share" were changed to "pro rata share". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Section 2 of ch. 389, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), amended this section. Section 1 of ch. 528, Laws of 2010, effective July 1, 2010 (approved April 14, 2010), also amended this section. As set out above, this section reflects the language of both sections pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation the authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Section 3 of Chapter 397, Laws of 2016, effective from and after July 1, 2016, (approved April 11, 2016), amended this section. Section 10 of Chapter 420, Laws of 2016, effective from and after July 1, 2016 (approved April 14, 2016), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Provision fixing governor's salary, see § 25-3-31.

Receiving credit for retirement purposes for unused personal leave or major medical leave, see §§ 25-3-93 and 25-3-95.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Computation of creditable service, see § 25-11-109.

Computation of employer's annuity, which constitutes one component of disability benefit of member under age 60, on basis of "earned compensation as defined in this section, see § 25-11-113.

Retirement allowance for death or disability in line of duty, see § 25-11-114.

Employer to reimburse system for cost of on-site compliance audit if audit reveals failure to correctly report eligibility as required by this section, see § 25-11-119.1.

Payments by employers and members into retirement system, see § 25-11-123.

Application of the definitions of this section to the supplemental legislative retirement plan, see § 25-11-303.

Earned compensation under option retirement program for employees of state institutions of higher learning, see § 25-11-411.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Federal Aspects—

Section 125 of the Internal Revenue Code, see 26 USCS § 125.

Section 401(a)(17) of the Internal Revenue Code, see 26 USCS § 401(a)(17).

Federal Insurance Contributions Act, see 26 USCS §§ 3101 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Earned compensation.

1. In general.

Section 25-11-103(g), which provides that the spouse of a member of the Public Employees' Retirement System shall be the member's beneficiary unless the member has designated another beneficiary subsequent to the date of marriage, does not constitute an unreasonable impairment of an employee's contractual right contrary to the United States and Mississippi Constitutions because it provides protection to those whose spouse fails to redesignate due to "inadvertence" while allowing an employee to make a "conscious decision" to redesignate if he or she does not want his or her spouse to receive the death benefits. Matter of Dillon v. Beal, 632 So. 2d 1298, 1994 Miss. LEXIS 113 (Miss. 1994).

Section 25-11-103(g) would not be applied so as to defeat the clear intention of a deceased employee to designate his children as the beneficiaries of his retirement benefits, even though the employee failed to strictly comply with the statute in that he did not designate a beneficiary other than his spouse after his marriage, where the employee and his wife had filed a complaint for divorce which included a property settlement agreement in which the parties relinquished any rights in each other's estates, the employee's children had been designated as the beneficiaries of his state retirement funds prior to his marriage, and the employee's will directed his daughter to contact the Mississippi retirement system and to divide the state funds between his children. Matter of Dillon v. Beal, 632 So. 2d 1298, 1994 Miss. LEXIS 113 (Miss. 1994).

2. Earned compensation.

"Earned compensation" included the reimbursements for meals, lodging, utilities and mileage paid by the state to a Supreme Court Justice as such reimbursements were made in accordance with the law and in the regular course and scope of the justice's work, rather than for extraordinary or unusual situations outside of the justice's regular course and scope of work. Public Emples. Ret. Sys. v. Hawkins, 2001 Miss. LEXIS 27 (Miss. Feb. 7, 2001).

Amounts paid to a Supreme Court Justice from a jurisdiction outside of Hinds County for meals, lodging, utilities, and travel expenses incurred were included in the definition of "earned compensation" for retirement purposes as set forth in subsection (k). Public Emples. Ret. Sys. v. Hawkins, 781 So. 2d 899, 2001 Miss. LEXIS 78 (Miss. 2001).

OPINIONS OF THE ATTORNEY GENERAL

Salaried individual employed as public defender by board of supervisors meets definition of employee and state service as set forth in statute, and therefore, county board of supervisors would be mandated to contribute to state retirement of individual. 1990 Miss. Op. Att'y Gen. 154.

Municipalities may establish such vacation policies as they deem necessary, except that compensation and time reported to retirement system cannot exceed benefits afforded at state level for purposes of computing retirement benefits; any policy regarding work and vacation schedules of policemen must pass constitutional muster, including scrutiny under equal protection principles, and must not be inconsistent with other laws of the state. 1992 Miss. Op. Att'y Gen. 890.

Miss. Code Section 25-11-103 limits membership in Public Employees' Retirement System to employees of state, its political subdivisions or instrumentalities; nonprofit corporation or organization which is not state agency, political subdivision or instrumentality thereof, but is private, nonprofit organization, and employees of such organization, would not be eligible for participation in retirement system under provisions of Miss. Code Sections 25-11-101 et seq. 1993 Miss. Op. Att'y Gen. 24.

Reading Miss. Code Sections 25-11-103 and 25-11-109 in pari materia, any member of retirement system who terminated during year should be allowed to report no more than amount equal to maximum monthly amount of $10,416.66 (based on the maximum annual amount of $125,000) times number of months worked during fiscal year; thus, upon termination, if member has not been reported on maximum monthly amount for each month of service during fiscal year, then part or all of lump-sum payment for unused leave could be reported to the system up to allowable proportionate part of maximum for service performed during fiscal year. 1993 Miss. Op. Att'y Gen. 109.

Under Miss. Code Section 25-11-103, each of two or more employment positions with different reporting entities (employers) must meet standard for covered position in order for earnings of such position to be reported to retirement system. 1993 Miss. Op. Att'y Gen. 196.

In order to participate in Public Employees' Retirement System (PERS), participating agency must meet definition of "employer" in Miss. Code § 25-11-103; further, employee of such employer must be in "state service" as defined in Miss. Code Section 25-11-103 in order to be eligible to participate in PERS; in addition, Miss. Code Section 25-11-103 defines "employee" as any person legally occupying position in state service, including employees of PERS; thus, foregoing definitions limit membership in PERS to employees of state, its political subdivisions or instrumentalities thereof. 1993 Miss. Op. Att'y Gen. 198.

Under Miss. Code Section 25-11-103, city may establish policy of paying employees, who terminate or retire, for unused sick leave; however, policy may only apply to leave earned after adoption of policy. 1993 Miss. Op. Att'y Gen. 193.

A conditional resignation, made contingent upon the school board agreeing to reemploy the teacher for the remainder of the school year, does not constitute a "withdrawal from service" under Section 25-11-103(aa). 1995 Miss. Op. Att'y Gen. 99.

Under Sections 25-11-103 and 25-11-111, there must be a complete severance of employment in the state service by resignation, dismissal or discharge, prior to being eligible for the payment of service retirement benefits. 1995 Miss. Op. Att'y Gen. 99.

Any unused leave for which payment is not received will be applied to creditable service in accordance with Section 25-11-103(i). Such authorization would be effective for payment of unused leave to the person designated by such employee for this purpose, or, in the absence of such designation, to the beneficiary of such employee, or to the estate, in the event of the death of the employee prior to retirement. See also Section 37-7-307(1). 1995 Miss. Op. Att'y Gen. 319.

Under Section 25-11-103(i) if the service otherwise qualifies as creditable service under another specific statutory provision, such as prior service, military service, out-of-state public service, service while on professional leave, or such other service as may be legislatively authorized from time to time, then the PERS Board of Trustees may award creditable service for such service. 1995 Miss. Op. Att'y Gen. 597.

Unused personal leave in excess of 30 days and any unused sick leave is counted as creditable service for purposes of the retirement system as provided in Section 25-11-103. 1995 Miss. Op. Att'y Gen. 251.

Upon termination of employment, each school attendance officer's unused personal leave in excess of thirty days shall be counted as creditable service for the purposes of the retirement system. See Sections 25-11-103 and 25-11-109. 1996 Miss. Op. Att'y Gen. 505.

After compulsory school attendance officers were deemed to be state employees, any accrued leave in excess of 30 days could be transferred to the Public Employees' Retirement System as service credit, provided a valid leave policy had been adopted and that said policy was identical to the provisions of §§ 25-11-103 and 25-11-109. 1998 Miss. Op. Att'y Gen. 314.

Municipal governing authorities are authorized to adopt vacation and sick leave policies as they deem necessary and, therefore, a municipality may develop a schedule for accrual of vacation or sick leave which recognizes differences between those employees working 12 hour shifts and those working eight hour shifts. Twiford, 2002 Miss. Op. Att'y Gen. 776.

A municipality is not required by statute to provide personal leave or sick leave benefits to employees, however, if a municipality does provide personal leave and sick leave benefits, the municipality must comply with its own policies; further, those policies may not be in conflict with any state or federal statutes or regulations, including the Family and Medical Leave Act of 1993. 2002 Miss. Op. Att'y Gen. 492.

Headstart teaching experience is not state service and cannot constitute membership service for which credit is allowed under the Public Employees' Retirement System. 2002 Miss. Op. Att'y Gen. 540.

The salary established for a county attorney by § 25-3-9 comprises the "earned compensation" addressed in subsection (k) of this section. 2003 Miss. Op. Att'y Gen. 24.

With regard to the 2000 amendment of subsection (k) of this section, the new limitation on total earned compensation is effective from July 1, 2002, forward; therefore, the prior limitation was in effect until June 30, 2002, and total earned compensation for the 2002 calendar year was required to be prorated accordingly. 2003 Miss. Op. Att'y Gen. 71.

With regard to the 2000 amendment of subsection (k) of this section, the pay period for Chancery and Circuit Clerks who held office on January 1, 2002, would begin on January 1, 2002; therefore, total earned compensation received by these clerks would be prorated for the calendar year and limited to $ 137,500.00 for purposes of the Retirement System. 2003 Miss. Op. Att'y Gen. 71.

Due to the irregular manner in which fees are received and expenses are incurred by Chancery and Circuit Clerks, fees net of expenditures for the entire calendar year should be used as the basis for the prorated earned compensation. 2003 Miss. Op. Att'y Gen. 71.

Where a teacher claimed that, due to errors on the part of the school district, or the retirement commission, she did not receive credit for retirement contributions in one of her years of service, and requested the school district to reimburse her for payments she had to make to the commission when she retired, because a period of six years has elapsed since her retirement, there was no obligation or right of the school district to pay the employee as any cause of action would be barred by the statute of limitations. 2003 Miss. Op. Att'y Gen. 252.

Community and junior colleges are not covered by the state's leave law, but retain the authority to adopt their own leave policies so long as provisions therein for retirement credit do not exceed the state law provisions. 2003 Miss. Op. Att'y Gen. 331.

Where there is authority for the employer to pay non-taxable life and health insurance premiums, the payment of such premiums is not to be used in the calculation of the 25% income limitation or in calculating the limited compensation under the half-time/half-pay option. 2004 Miss. Op. Att'y Gen. 400.

Where an employee has unused personal leave time at retirement, if a city's policy is substantially similar to the state law provisions, then the employee may be paid a lump sum payment for not more than 30 days personal leave as of the date of the termination of the employee's employment, i.e., the date of retirement. If the city's policies differ from state law, then the provisions of the city's policies should be followed. 2005 Miss. Op. Att'y Gen. 488.

A municipal governing authority has the power to establish sick leave policies which govern the amount of leave available to employees, the accrual of that leave, and the payment for leave that is not used upon a retirement or termination of an employee. 2005 Miss. Op. Att'y Gen. 209.

An individual serving as an elected mayor does not accrue personal or major medical leave. 2006 Miss. Op. Att'y Gen. 22.

Municipalities may enact leave policies which recognize the differences in work schedules and duties of employees, and a policy which provides that essential municipal employees are to be granted additional leave for working during any time in which non-essential municipal employees are granted leave with pay would be a valid exercise of municipal power. 2006 Miss. Op. Att'y Gen. 181.

RESEARCH REFERENCES

ALR.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 91 A.L.R.5th 225.

§ 25-11-105. Membership.

I. THOSE WHO ARE ELIGIBLE FOR MEMBERSHIP

The membership of this retirement system shall be composed as follows:

(a)(i) All persons who become employees in the state service after January 31, 1953, and whose wages are subject to payroll taxes and are lawfully reported on IRS Form W-2, except those specifically excluded, or as to whom election is provided in Articles 1 and 3, shall become members of the retirement system as a condition of their employment.

(ii) From and after July 1, 2002, any individual who is employed by a governmental entity to perform professional services shall become a member of the system if the individual is paid regular periodic compensation for those services that is subject to payroll taxes, is provided all other employee benefits and meets the membership criteria established by the regulations adopted by the board of trustees that apply to all other members of the system; however, any active member employed in such a position on July 1, 2002, will continue to be an active member for as long as they are employed in any such position.

(b) All persons who become employees in the state service after January 31, 1953, except those specifically excluded or as to whom election is provided in Articles 1 and 3, unless they file with the board before the lapse of sixty (60) days of employment or sixty (60) days after the effective date of the cited articles, whichever is later, on a form prescribed by the board, a notice of election not to be covered by the membership of the retirement system and a duly executed waiver of all present and prospective benefits that would otherwise inure to them on account of their participation in the system, shall become members of the retirement system; however, no credit for prior service will be granted to members who became members of the system before July 1, 2007, until they have contributed to Article 3 of the retirement system for a minimum period of at least four (4) years, or to members who became members of the system on or after July 1, 2007, until they have contributed to Article 3 of the retirement system for a minimum period of at least eight (8) years. Those members shall receive credit for services performed before January 1, 1953, in employment now covered by Article 3, but no credit shall be granted for retroactive services between January 1, 1953, and the date of their entry into the retirement system, unless the employee pays into the retirement system both the employer's and the employee's contributions on wages paid him during the period from January 31, 1953, to the date of his becoming a contributing member, together with interest at the rate determined by the board of trustees. Members reentering after withdrawal from service shall qualify for prior service under the provisions of Section 25-11-117. From and after July 1, 1998, upon eligibility as noted above, the member may receive credit for such retroactive service provided:

(i) The member shall furnish proof satisfactory to the board of trustees of certification of that service from the covered employer where the services were performed; and

(ii) The member shall pay to the retirement system on the date he or she is eligible for that credit or at any time thereafter before the date of retirement the actuarial cost for each year of that creditable service. The provisions of this subparagraph (ii) shall be subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated under Section 415.

Nothing contained in this paragraph (b) shall be construed to limit the authority of the board to allow the correction of reporting errors or omissions based on the payment of the employee and employer contributions plus applicable interest.

(c) All persons who become employees in the state service after January 31, 1953, and who are eligible for membership in any other retirement system shall become members of this retirement system as a condition of their employment, unless they elect at the time of their employment to become a member of that other system.

(d) All persons who are employees in the state service on January 31, 1953, and who are members of any nonfunded retirement system operated by the State of Mississippi, or any of its departments or agencies, shall become members of this system with prior service credit unless, before February 1, 1953, they file a written notice with the board of trustees that they do not elect to become members.

(e) All persons who are employees in the state service on January 31, 1953, and who under existing laws are members of any fund operated for the retirement of employees by the State of Mississippi, or any of its departments or agencies, shall not be entitled to membership in this retirement system unless, before February 1, 1953, any such person indicates by a notice filed with the board, on a form prescribed by the board, his individual election and choice to participate in this system, but no such person shall receive prior service credit unless he becomes a member on or before February 1, 1953.

(f) Each political subdivision of the state and each instrumentality of the state or a political subdivision, or both, is authorized to submit, for approval by the board of trustees, a plan for extending the benefits of this article to employees of any such political subdivision or instrumentality. Each such plan or any amendment to the plan for extending benefits thereof shall be approved by the board of trustees if it finds that the plan, or the plan as amended, is in conformity with such requirements as are provided in Articles 1 and 3; however, upon approval of the plan or any such plan previously approved by the board of trustees, the approved plan shall not be subject to cancellation or termination by the political subdivision or instrumentality. No such plan shall be approved unless:

(i) It provides that all services that constitute employment as defined in Section 25-11-5 and are performed in the employ of the political subdivision or instrumentality, by any employees thereof, shall be covered by the plan, with the exception of municipal employees who are already covered by existing retirement plans; however, those employees in this class may elect to come under the provisions of this article;

(ii) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (d) of Section 25-11-123 and of paragraph (f)(v)2 and 3 of this section are expected to be derived and contains reasonable assurance that those sources will be adequate for that purpose;

(iii) It provides for such methods of administration of the plan by the political subdivision or instrumentality as are found by the board of trustees to be necessary for the proper and efficient administration thereof;

(iv) It provides that the political subdivision or instrumentality will make such reports, in such form and containing such information, as the board of trustees may from time to time require;

(v) It authorizes the board of trustees to terminate the plan in its entirety in the discretion of the board if it finds that there has been a failure to comply substantially with any provision contained in the plan, the termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the board and as may be consistent with applicable federal law.

1. The board of trustees shall not finally refuse to approve a plan submitted under paragraph (f), and shall not terminate an approved plan without reasonable notice and opportunity for hearing to each political subdivision or instrumentality affected by the board's decision. The board's decision in any such case shall be final, conclusive and binding unless an appeal is taken by the political subdivision or instrumentality aggrieved by the decision to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to civil causes by certiorari.

2. Each political subdivision or instrumentality as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in Section 25-11-5), at such time or times as the board of trustees may by regulation prescribe, contribu-

tions in the amounts and at the rates specified in the applicable agreement entered into by the board.

3. Every political subdivision or instrumentality required to make payments under paragraph (f)(v)2 of this section is authorized, in consideration of the employees' retention in or entry upon employment after enactment of Articles 1 and 3, to impose upon its employees, as to services that are covered by an approved plan, a contribution with respect to wages (as defined in Section 25-11-5) not exceeding the amount provided in Section 25-11-123(d) if those services constituted employment within the meaning of Articles 1 and 3, and to deduct the amount of the contribution from the wages as and when paid. Contributions so collected shall be paid into the contribution fund as partial discharge of the liability of the political subdivisions or instrumentalities under paragraph (f)(v)2 of this section. Failure to deduct the contribution shall not relieve the employee or employer of liability for the contribution.

4. Any state agency, school, political subdivision, instrumentality or any employer that is required to submit contribution payments or wage reports under any section of this chapter shall be assessed interest on delinquent payments or wage reports as determined by the board of trustees in accordance with rules and regulations adopted by the board and delinquent payments, assessed interest and any other amount certified by the board as owed by an employer, may be recovered by action in a court of competent jurisdiction against the reporting agency liable therefor or may, upon due certification of delinquency and at the request of the board of trustees, be deducted from any other monies payable to the reporting agency by any department or agency of the state.

5. Each political subdivision of the state and each instrumentality of the state or a political subdivision or subdivisions that submit a plan for approval of the board, as provided in this section, shall reimburse the board for coverage into the expense account, its pro rata share of the total expense of administering Articles 1 and 3 as provided by regulations of the board.

(g) The board may, in its discretion, deny the right of membership in this system to any class of employees whose compensation is only partly paid by the state or who are occupying positions on a part-time or intermittent basis. The board may, in its discretion, make optional with employees in any such classes their individual entrance into this system.

(h) An employee whose membership in this system is contingent on his own election, and who elects not to become a member, may thereafter apply for and be admitted to membership; but no such employee shall receive prior service credit unless he becomes a member before July 1, 1953, except as provided in paragraph (b).

(i) If any member of this system changes his employment to any agency of the state having an actuarially funded retirement system, the board of trustees may authorize the transfer of the member's creditable service and of the present value of the member's employer's accumulation account and of the present value of the member's accumulated membership contributions to that other system, provided that the employee agrees to the transfer of his accumulated membership contributions and provided that the other system is authorized to receive and agrees to make the transfer.

If any member of any other actuarially funded system maintained by an agency of the state changes his employment to an agency covered by this system, the board of trustees may authorize the receipt of the transfer of the member's creditable service and of the present value of the member's employer's accumulation account and of the present value of the member's accumulated membership contributions from the other system, provided that the employee agrees to the transfer of his accumulated membership contributions to this system and provided that the other system is authorized and agrees to make the transfer.

(j) Wherever state employment is referred to in this section, it includes joint employment by state and federal agencies of all kinds.

(k) Employees of a political subdivision or instrumentality who were employed by the political subdivision or instrumentality before an agreement between the entity and the Public Employees' Retirement System to extend the benefits of this article to its employees, and which agreement provides for the establishment of retroactive service credit, and who became members of the retirement system before July 1, 2007, and have remained contributors to the retirement system for four (4) years, or who became members of the retirement system on or after July 1, 2007, and have remained contributors to the retirement system for eight (8) years, may receive credit for that retroactive service with the political subdivision or instrumentality, provided that the employee and/or employer, as provided under the terms of the modification of the joinder agreement in allowing that coverage, pay into the retirement system the employer's and employee's contributions on wages paid the member during the previous employment, together with interest or actuarial cost as determined by the board covering the period from the date the service was rendered until the payment for the credit for the service was made. Those wages shall be verified by the Social Security Administration or employer payroll records. Effective July 1, 1998, upon eligibility as noted above, a member may receive credit for that retroactive service with the political subdivision or instrumentality provided:

(i) The member shall furnish proof satisfactory to the board of trustees of certification of those services from the political subdivision or instrumentality where the services were rendered or verification by the Social Security Administration; and

(ii) The member shall pay to the retirement system on the date he or she is eligible for that credit or at any time thereafter before the date of retirement the actuarial cost for each year of that creditable service. The provisions of this subparagraph (ii) shall be subject to the limitations of

Section 415 of the Internal Revenue Code and regulations promulgated under Section 415.

Nothing contained in this paragraph (k) shall be construed to limit the authority of the board to allow the correction of reporting errors or omissions based on the payment of employee and employer contributions plus applicable interest. Payment for that time shall be made beginning with the most recent service. Upon the payment of all or part of the required contributions, plus interest or the actuarial cost as provided above, the member shall receive credit for the period of creditable service for which full payment has been made to the retirement system.

(*l*) Through June 30, 1998, any state service eligible for retroactive service credit, no part of which has ever been reported, and requiring the payment of employee and employer contributions plus interest, or, from and after July 1, 1998, any state service eligible for retroactive service credit, no part of which has ever been reported to the retirement system, and requiring the payment of the actuarial cost for that creditable service, may, at the member's option, be purchased in quarterly increments as provided above at the time that its purchase is otherwise allowed.

(m) All rights to purchase retroactive service credit or repay a refund as provided in Section 25-11-101 et seq. shall terminate upon retirement.

II. THOSE WHO ARE NOT ELIGIBLE FOR MEMBERSHIP

The following classes of employees and officers shall not become members of this retirement system, any other provisions of Articles 1 and 3 to the contrary notwithstanding:

(a) Patient or inmate help in state charitable, penal or correctional institutions;

(b) Students of any state educational institution employed by any agency of the state for temporary, part-time or intermittent work;

(c) Participants of Comprehensive Employment and Training Act of 1973 (CETA) being Public Law 93-203, who enroll on or after July l, 1979;

(d) From and after July 1, 2002, individuals who are employed by a governmental entity to perform professional service on less than a full-time basis who do not meet the criteria established in I(a)(ii) of this section.

III. TERMINATION OF MEMBERSHIP

Membership in this system shall cease by a member withdrawing his accumulated contributions, or by a member withdrawing from active service with a retirement allowance, or by a member's death.

HISTORY:

Codes, 1942, § 7446-13; Laws, 1952, ch. 299, § 13; Laws, 1960, ch. 453, § 2; Laws, 1979, ch. 419; Laws, 1980, ch. 481, § 2; Laws, 1983, ch. 449, § 2; Laws, 1991, ch. 513, § 3; Laws, 1993, ch. 617, § 3; Laws, 1994, ch. 601, § 2; Laws, 1996, ch. 472, § 2; Laws, 2000, ch. 342, § 1; Laws, 2002, ch. 627, § 6; Laws, 2004, ch. 561, § 5; Laws, 2007, ch. 407, § 2; Laws, 2016, ch. 397, § 4; Laws, 2017, ch. 338, § 1, eff from and after July 1, 2017.

Editor's Notes —

Public Law 93-203 (former 29 USCS §§ 801 et seq.), referred to in II (c), was repealed by Act October 13, 1982, Public Law 97-300. Similar provisions now appear in 29 USCS §§ 1501 et seq.

Amendment Notes —

The 2017 amendment, in I., deleted "except that any community hospital serving a municipality that joined the Public Employees' Retirement System as of November 1, 1956, to offer social security coverage for its employees and later extended retirement annuity coverage to its employees as of December 1, 1965, may, upon documentation of extreme financial hardship, have future retirement annuity coverage cancelled or terminated at the discretion of the board of trustees" following "subdivision or instrumentality" in the next-to-last sentence of the introductory paragraph of (f), and deleted "in increments of not less than one (1) month of creditable service" following "shall be made" in the second sentence of the last paragraph of (k).

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Membership's representation on board appointed by governing body of municipality and serving in advisory capacity to Board of the General Retirement System, see § 21-29-9.

Membership in Public Employees' Retirement System for new employees of police and fire departments of participating municipalities after July 1, 1987, see § 21-29-101.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Provision that, for purposes of Articles 1 and 3 of this chapter, "member", "prior service", and "state service" shall be defined in part by reference to this section, see § 25-11-103.

What constitutes creditable service, see § 25-11-109.

Payment of expenses of administering retirement system from interest earnings, see § 25-11-123.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Cessation of membership in public employees' retirement system for members of the highway patrol, see § 25-13-17.

Coverage by public employees' retirement system of employees of safety patrol not covered by highway safety patrol retirement system, see § 25-13-23.

Federal Aspects—

Section 415 of the Internal Revenue Code, see 26 USCS § 415.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Students.
3. Employee-employer relationship.

1. In general.

The Public Employees' Retirement System Board of Trustees properly found that the Executive Director of the Board of Public Accountancy was not an "employee" within the meaning of the statute, as the legislature failed to grant the board permission to compensate the Executive Director as an employee. Horton v. Public Employees' Retirement Sys., 711 So. 2d 896, 1998 Miss. LEXIS 252 (Miss. 1998).

2. Students.

It was not error for the retirement board to find that the plaintiff was a quarter pay student employee of a public university and, therefore, not entitled to credit for such work, notwithstanding testimony that he often worked as much as 30 hours or more per week and was one of only five doctoral students who received an assistantship position out of a possible 35 students. Rowzee v. Public Emples. Retirement Sys., 777 So. 2d 664, 2000 Miss. LEXIS 265 (Miss. 2000).

3. Employee-employer relationship.

Trial court properly affirmed the denial of a former supreme court justice's request for benefits based on work he performed as a court-appointed attorney in a county chancery court because no employee-employer relationship had been established where none of his earnings were ever reported to and he did not contribute to the Public Employees' Retirement System, the chancery court assigned him cases on an as-needed basis, the county did not have control over his day-to-day work, and he maintained a private law practice during the subject period, and the former justice offered no details as to how the participation of the attorney general's office at the hearing resulted in bias or partiality in the adjudication of the proceedings. Easley v. Public Emples.' Ret. Sys., 222 So. 3d 1096, 2017 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 223 So. 3d 789, 2017 Miss. LEXIS 312 (Miss. 2017).

OPINIONS OF THE ATTORNEY GENERAL

Regularly employed attorney for Wastewater Authority is eligible to be included in State Retirement Plan and should have been reported to Retirement System; although total amount of compensation paid to attorney, including sums paid for extraordinary activities, should be reported to Retirement System and appropriate contributions made thereon, amounts paid as reimbursement of expenses and documented as such would not be considered compensation and should not be reported to Retirement System. 1992 Miss. Op. Att'y Gen. 523.

Coroner fulfilling unexpired term of elected county coroner position would have been covered elected official and retirement contributions would have been due on compensation paid to him as employee by direct warrant on county treasury. 1992 Miss. Op. Att'y Gen. 558.

County human resource agency created as instrumentality of county is "employer" and agency employees are employees in state service for purposes of participation in Public Employees' Retirement System. 1992 Miss. Op. Att'y Gen. 933.

Miss. Code Sections 25-11-105 et seq. provides for coverage under Public Employees' Retirement System on county engineer who is paid regular salary (which may or may not be based on percentage of construction costs), so as to cover such county engineer's services for definite, protracted period of time; however, earnings of county engineer who is merely hired for particular job would not be covered under Public Employees' Retirement System. 1993 Miss. Op. Att'y Gen. 241.

Where employee is clearly employee of county, as participating employer in Public Employees' Retirement System, and where they were employed in covered position as required to receive service credit, then employer is obligated to withhold employee contribution from compensation paid and to remit same with employer contribution to Retirement System; failure to make such payments, as required, does not relieve political subdivision of its obligation to see that such payments were made, nor employee from liability for that amount which should have been paid by employee. 1993 Miss. Op. Att'y Gen. 427.

Individual with status of employee occupying position in state service, who also works one-half or more of the time required of full-time employees, would be eligible for membership in retirement system. 1994 Miss. Op. Att'y Gen. 949.

The use of the actuarial cost of benefits to establish previous service credit is not authorized under Sections 25-11-105 and 25-11-123. However, these provisions authorize the Board of Trustees to determine the rate of interest that will be applied under section 25-11-105(k) and as part of the calculation to determine the adjusted employer's contribution rate under section 25-11-123(c)(1). 1995 Miss. Op. Att'y Gen. 32.

Under section 25-11-105 membership service can only be awarded where an individual is a member of the retirement system at the time that the service is performed, the PERS Board of Trustees may not award membership service to an individual who was not eligible for membership in PERS at the time the service was performed. 1995 Miss. Op. Att'y Gen. 597.

There is no provision in the law which would allow for a municipality to withhold the employer contributions to the system on behalf of an employee who is deemed a "probationary" employee under the municipality's personnel system. 2003 Miss. Op. Att'y Gen. 756.

Where the joinder agreement for a town of indicates that when the town joined the Retirement System, it elected to exclude all elective positions from coverage, and subsequently the Joinder Agreement was amended to cover all elected officials except alderman, thus, the members of the Town Board are excluded from coverage and should not be reported. 2003 Miss. Op. Att'y Gen. 738.

The positions of "municipal judge" and "municipal judge pro tempore" are different positions and would not fall within the "grandfather" provision of Section 25-11-105(a)(ii). 2005 Miss. Op. Att'y Gen. 420.

Coverage of attorneys who represent public entities covered in the Public Employees' Retirement System discussed. 2005 Miss. Op. Att'y Gen. 224.

RESEARCH REFERENCES

ALR.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 A.L.R.3d 644.

Am. Jur.

17 Am. Jur. Proof of Facts 2d 51, Arbitrary Enactment or Application of Eligibility Requirement for Private Pension Benefits.

§ 25-11-106. Counties responsible for employer contributions on direct payments to constables covered under Public Employees' Retirement System; constables responsible for employee contributions; county required to withhold percentage of gross fee income as estimated retirement contributions where constable responsible for both employer and employee contributions on net fee income; constables must make delinquent payments or elect not to and forfeit service credit.

(1)(a) Any constable in office as of July 1, 2005, whose position is covered in the Public Employees' Retirement System by virtue of a plan submitted and approved under Section 25-11-105(f) will remain a member of the Public Employees' Retirement System.

(b)(i) The county is responsible for employer contributions on all direct payments to the constable from the county.

(ii) Except as otherwise provided in subparagraph (iii) of this paragraph, the constable is responsible for the employee contributions on direct payments to the constable from the county and both the employer and employee share of contributions on his or her net fee income.

(iii) For contributions required for calendar year 2014 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the net fee income of its constables. If the county elects to be responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(c) From and after January 1, 2006, in cases in which the constable is responsible for both the employer and employee contributions on net fee income, the county shall withhold from fee income due to the constable a percentage amount, as set by the board, of the gross fee income paid to the constable as estimated retirement contributions and shall remit that amount to the system. Not later than the date on which the annual report of earnings is due to be filed as provided in Section 7-3-45, the constable shall submit to the system a copy of the earnings record and make complete payment of any required contributions on net earnings from his or her office, but not less than the contributions due on the governmental treasuries paid by the county in the prior calendar year. If the constable fails to make full payment of contributions at the time required, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees due to the constable until such time as his or her retirement contributions are fully reported and made.

(2) Any current or former constable for whom appropriate employer and employee contributions and interest on all fees and county income from

covered service before January 1, 2006, have not been made shall do one (1) of the following:

(a) Make the required payments or enter into an irrevocable agreement by not later than December 31, 2005, to make the payments for all calendar years before January 1, 2006. Contributions and interest due and owing for covered services before January 1, 2006, must be received by the system not later than April 15, 2007, or such date as set forth in the payment schedule mutually adopted by the member and the system.

(b) Elect, before December 31, 2005, not to pay delinquent employee and employer contributions and applicable interest for service as a constable before January 1, 2006. By making this election, the current or former constable shall irrevocably forfeit that service credit so as to be relieved of the liability for additional employer and employee contributions and applicable interest.

(3) Where a current or former constable fails to make required contributions as provided in subsection (2)(a) of this section, or where a current or former constable irrevocably elects to forfeit service credit as provided in subsection (2)(b) of this section, all employer and employee contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the constable or former constable. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

HISTORY:

Laws, 2005, ch. 439, § 1; Laws, 2006, ch. 357, § 1; Laws, 2013, ch. 488, § 1, eff from and after Oct. 1, 2013.

§ 25-11-106.1. Counties responsible for employer contributions on direct payments to chancery or circuit clerks covered under Public Employees' Retirement System; chancery or circuit clerks responsible for employee contributions; chancery or circuit clerk delinquent contributions; irrevocable forfeiture of service credit for any period for which appropriate employee and employer contributions not made.

(1) Any chancery or circuit clerk in office as of January 1, 2011, whose position is covered in the Public Employees' Retirement System by virtue of a plan submitted and approved under Section 25-11-105(f) will remain a member of the Public Employees' Retirement System.

(2)(a)(i) The county is responsible for employer contributions on net income attributable to direct treasury or county payroll income paid to the chancery or circuit clerk from the county.

(ii) Except as otherwise provided in this subsection (2), the chancery or circuit clerk is responsible for the employee contributions on net income attributable to direct treasury or county payroll income paid to the clerk and both the employee and employer share of contributions on the proportionate share of net income attributable to fees.

(iii) For contributions required for calendar year 2011 and any calendar year thereafter, the county may elect, by majority vote of the board of supervisors spread upon its minutes, to be responsible for the employer share of contributions on the proportionate share of net income of the chancery and circuit clerk attributable to fees. If the county elects to be responsible for employer contributions under this provision, the election shall be irrevocable until the board of supervisors takes office for the next succeeding term of office at which time the board may elect whether to continue the election. Notice shall be given to the executive director of any election made under this subparagraph (iii) within five (5) days after the election is made.

(b) Not later than the date on which the annual report of earnings is due to be filed with the Office of the State Auditor, the chancery or circuit clerk shall submit to the system a copy of the earnings record and make complete payment of required contributions on net income from his or her office; however, in no event shall the contributions be less than the contributions due on the governmental treasuries paid by the county in the prior calendar year.

(c) If the chancery or circuit clerk fails to make full payment of contributions as required for calendar year 2010 or any calendar year thereafter, the system shall certify the delinquency to the county and the county shall withhold any and all payments and fees, including accrued interest, due to the chancery or circuit clerk in a manner as prescribed by board regulations until such time as the total amount of his or her delinquent contributions are withheld and pay the amount so withheld to the system.

(3) Any current or former chancery or circuit clerk for whom appropriate employee and employer contributions and interest on all fees and county income from covered service before January 1, 2010, have not been made shall do one (1) of the following:

(a) Pay to the system the required contributions and interest by not later than December 31, 2011. Failure to pay the required contributions and interest by December 31, 2011, shall constitute an irrevocable election to forfeit service credit for any period for which contributions are delinquent. Upon such forfeiture, the chancery or circuit clerk shall be relieved of the liability for additional employee and employer contributions and applicable interest for covered service before January 1, 2010.

(b) Elect, before December 31, 2011, not to pay delinquent employee and employer contributions and applicable interest for service as a chancery or circuit clerk before January 1, 2010. By making this election, the current or former chancery or circuit clerk shall irrevocably forfeit service credit for any period for which contributions are delinquent and shall not be liable for employee and employer contributions and applicable interest for covered service before January 1, 2010.

(4) If a current or former chancery or circuit clerk fails to make required contributions as provided in subsection (3)(a) of this section or elects to forfeit

service credit as provided in subsection (3)(b) of this section, all employee and employer contributions previously paid on that service shall be credited to the county as the reporting entity to be distributed as appropriate between the county and the chancery or circuit clerk or former chancery or circuit clerk. No further contributions shall be due on that past service and any credit on that past service shall be removed from the member's record and may not be reinstated at any time in the future.

HISTORY:
Laws, 2011, ch. 402, § 1, eff from and after passage (approved Mar. 14, 2011).

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference near the beginning of (2)(a)(ii) by substituting "(ii) Except as otherwise provided in this subsection (2)" for "(ii) Except as otherwise provided in this paragraph (2)." The Joint Committee ratified the correction at its July 13, 2011, meeting.

§ 25-11-107. Civilian employees of Mississippi National Guard as a coverage group.

The board of trustees of the Public Employees' Retirement System is hereby authorized and empowered to include as a coverage group under this article those regular full-time civilian employees of the Mississippi National Guard whose entire salary is paid on certification out of allotted federal funds, provided funds are made available from the federal government or state appropriations to pay employers' contributions on the salaries of such employees. In event the employers' contributions on such salaries should fail to be paid in full to the public employees' retirement system, the board of trustees of the Public Employees' Retirement System shall be prevented from allowing service credit for any such period of delinquency and such retirants would be allowed only such service credits as had accrued up to the time of any such delinquency; but members who remain in the system with their service credits suspended during any such period of delinquency may obtain full service credit upon the payment of all employers' contributions due the retirement system for the entire coverage group.

HISTORY:
Codes, 1942, § 7446-13.5; Laws, 1958, ch. 546; Laws, 1962, ch. 578, eff from and after passage (approved June 1, 1962).

Cross References —
Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

JUDICIAL DECISIONS

1. In general.
By virtue of this section, persons employed in violation of provisions of the Act are not entitled to membership in the state retirement system. Individual, who had formerly been in state service where he continued until the time of his retirement therefrom with federal retirement benefits, when he again entered state service, was not entitled to membership or past service credit under the state retirement system by reason of his re-employment in violation of Code 1942, § 7446-22. (now § 25-11-127). Board of Trustees v. Lowry, 228 Miss. 555, 88 So. 2d 585, 1956 Miss. LEXIS 546 (Miss. 1956).

A person who had formerly been in state employment but had then entered federal service where he continued until the time of his retirement therefrom with federal retirement benefits, when he again entered state service, was not a person legally occupying a position of state service. Board of Trustees v. Lowry, 228 Miss. 555, 88 So. 2d 585, 1956 Miss. LEXIS 546 (Miss. 1956).

§ 25-11-109. Creditable service.

(1) Under such rules and regulations as the board of trustees shall adopt, each person who becomes a member of this retirement system, as provided in Section 25-11-105, on or before July 1, 1953, or who became a member of the system before July 1, 2007, and contributes to the system for a minimum period of four (4) years, or who became a member of the system on or after July 1, 2007, and contributes to the system for a minimum period of eight (8) years, shall receive credit for all state service rendered before February 1, 1953. To receive that credit, the member shall file a detailed statement of all services as an employee rendered by him in the state service before February 1, 1953. For any member who joined the system after July 1, 1953, and before July 1, 2007, any creditable service for which the member is not required to make contributions shall not be credited to the member until the member has contributed to the system for a minimum period of at least four (4) years. For any member who joined the system on or after July 1, 2007, any creditable service for which the member is not required to make contributions shall not be credited to the member until the member has contributed to the system for a minimum period of at least eight (8) years.

(2)(a)(i) In the computation of creditable service for service rendered before July 1, 2017, under the provisions of this article, the total months of accumulative service during any fiscal year shall be calculated in accordance with the schedule as follows: ten (10) or more months of creditable service during any fiscal year shall constitute a year of creditable service; seven (7) months to nine (9) months inclusive, three-quarters (¾) of a year of creditable service; four (4) months to six (6) months inclusive, one-half (½) year of creditable service; one (1) month to three (3) months inclusive, one-quarter (¼) of a year of creditable service.

(ii) In the computation of creditable service rendered on or after July 1, 2017, under the provisions of this article, service credit shall be awarded in monthly increments in a manner prescribed by regulations of the board.

(b) In no case shall credit be allowed for any period of absence without compensation except for disability while in receipt of a disability retirement allowance, nor shall less than fifteen (15) days of service in any month, or service less than the equivalent of one-half (½) of the normal working load for the position and less than one-half (½) of the normal compensation for the position in any month, constitute a month of creditable service, nor shall more than one (1) year of service be creditable for all services rendered in any one (1) fiscal year; however, for a school employee, substantial completion of the legal school term when and where the service was rendered shall constitute a year of service credit. Any state or local elected official shall be deemed a full-time employee for the purpose of creditable service. However, an appointed or elected official compensated on a per diem basis only shall not be allowed creditable service for terms of office.

(c) In the computation of any retirement allowance or any annuity or benefits provided in this article, any fractional period of service of less than one (1) year shall be taken into account and a proportionate amount of such retirement allowance, annuity or benefit shall be granted for any such fractional period of service.

(d)(i) In the computation of unused leave for creditable service authorized in Section 25-11-103, the following shall govern for members who retire before July 1, 2017: twenty-one (21) days of unused leave shall constitute one (1) month of creditable service and in no case shall credit be allowed for any period of unused leave of less than fifteen (15) days. The number of months of unused leave shall determine the number of quarters or years of creditable service in accordance with the above schedule for membership and prior service.

(ii) In the computation of unused leave for creditable service authorized in Section 25-11-103, the following shall govern for members who retire on or after July 1, 2017: creditable service for unused leave shall be calculated in monthly increments in which one (1) month of service credit shall be awarded for each twenty-one (21) days of unused leave, except that the first fifteen (15) to fifty-seven (57) days of leave shall constitute three (3) months of service for those who became a member of the system before July 1, 2017.

(iii) In order for the member to receive creditable service for the number of days of unused leave under this paragraph, the system must receive certification from the governing authority.

(e) For the purposes of this subsection, members of the system who retire on or after July 1, 2010, shall receive credit for one-half (½) day of leave for each full year of membership service accrued after June 30, 2010. The amount of leave received by a member under this paragraph shall be added to the lawfully credited unused leave for which creditable service is provided under Section 25-11-103(i).

(f) For the purpose of this subsection, for members of the system who are elected officers and who retire on or after July 1, 1987, the following shall govern:

(i) For service before July 1, 1984, the members shall receive credit for leave (combined personal and major medical) for service as an elected official before that date at the rate of thirty (30) days per year.

(ii) For service on and after July 1, 1984, the member shall receive credit for personal and major medical leave beginning July 1, 1984, at the rates authorized in Sections 25-3-93 and 25-3-95, computed as a full-time employee.

(iii) If a member is employed in a covered nonelected position and a covered elected position simultaneously, that member may not receive service credit for accumulated unused leave for both positions at retirement for the period during which the member was dually employed.

During the period during which the member is dually employed, the member shall only receive credit for leave as provided for in this paragraph for an elected official.

(3) Subject to the above restrictions and to such other rules and regulations as the board may adopt, the board shall verify, as soon as practicable after the filing of such statements of service, the services therein claimed.

(4) Upon verification of the statement of prior service, the board shall issue a prior service certificate certifying to each member the length of prior service for which credit shall have been allowed on the basis of his statement of service. So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service, provided that any member may within five (5) years from the date of issuance or modification of such certificate request the board of trustees to modify or correct his prior service certificate. Any modification or correction authorized shall only apply prospectively.

When membership ceases, such prior service certificates shall become void. Should the employee again become a member, he shall enter the system as an employee not entitled to prior service credit except as provided in Sections 25-11-105(I), 25-11-113 and 25-11-117.

(5) Creditable service at retirement, on which the retirement allowance of a member shall be based, shall consist of the membership service rendered by him since he last became a member, and also, if he has a prior service certificate that is in full force and effect, the amount of the service certified on his prior service certificate.

(6) Any member who served on active duty in the Armed Forces of the United States, who served in the Commissioned Corps of the United States Public Health Service before 1972 or who served in maritime service during periods of hostility in World War II, shall be entitled to creditable service at no cost for his service on active duty in the Armed Forces, in the Commissioned Corps of the United States Public Health Service before 1972 or in such maritime service, provided he entered state service after his discharge from the Armed Forces or entered state service after he completed such maritime service. The maximum period for such creditable service for all military service as defined in this subsection (6) shall not exceed four (4) years unless positive proof can be furnished by such person that he was retained in the Armed Forces during World War II or in maritime service during World War II by causes beyond his control and without opportunity of discharge. The member shall furnish proof satisfactory to the board of trustees of certification of military service or maritime service records showing dates of entrance into active duty service and the date of discharge. From and after July 1, 1993, no creditable service shall be granted for any military service or maritime service to a member who qualifies for a retirement allowance in another public retirement system administered by the Board of Trustees of the Public Employees' Retirement System based, in whole or in part, on such military or maritime service. In no case shall the member receive creditable service if the member received a dishonorable discharge from the Armed Forces of the United States.

(7)(a) Any member of the Public Employees' Retirement System whose membership service is interrupted as a result of qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, and who has received the maximum service credit available under subsection (6) of this section, shall receive creditable service for the period of qualified military service that does not qualify as creditable service under subsection (6) of this section upon reentering membership service in an amount not to exceed five (5) years if:

(i) The member pays the contributions he would have made to the retirement system if he had remained in membership service for the period of qualified military service based upon his salary at the time his membership service was interrupted;

(ii) The member returns to membership service within ninety (90) days of the end of his qualified military service; and

(iii) The employer at the time the member's service was interrupted and to which employment the member returns pays the contributions it would have made into the retirement system for such period based on the member's salary at the time the service was interrupted.

(b) The payments required to be made in paragraph (a)(i) of this subsection may be made over a period beginning with the date of return to membership service and not exceeding three (3) times the member's qualified military service; however, in no event shall such period exceed five (5) years.

(c) The member shall furnish proof satisfactory to the board of trustees of certification of military service showing dates of entrance into qualified service and the date of discharge as well as proof that the member has returned to active employment within the time specified.

(8) Any member of the Public Employees' Retirement System who became a member of the system before July 1, 2007, and who has at least four (4) years of membership service credit, or who became a member of the system on or after July 1, 2007, and who has at least eight (8) years of membership service credit, shall be entitled to receive a maximum of five (5) years' creditable service for service rendered in another state as a public employee of such other state, or a political subdivision, public education system or other governmental instrumentality thereof, or service rendered as a teacher in American overseas dependent schools conducted by the Armed Forces of the United States for children of citizens of the United States residing in areas outside the continental United States, provided that:

(a) The member shall furnish proof satisfactory to the board of trustees of certification of such services from the state, public education system, political subdivision or retirement system of the state where the services were performed or the governing entity of the American overseas dependent school where the services were performed; and

(b) The member is not receiving or will not be entitled to receive from the public retirement system of the other state or from any other retirement plan, including optional retirement plans, sponsored by the employer, a retirement allowance including such services; and

(c) The member shall pay to the retirement system on the date he or she is eligible for credit for such out-of-state service or at any time thereafter before the date of retirement the actuarial cost as determined by the actuary for each year of out-of-state creditable service. The provisions of this subsection are subject to the limitations of Section 415 of the Internal Revenue Code and regulations promulgated under that section.

(9) Any member of the Public Employees' Retirement System who became a member of the system before July 1, 2007, and has at least four (4) years of membership service credit, or who became a member of the system on or after July 1, 2007, and has at least eight (8) years of membership service credit, and who receives, or has received, professional leave without compensation for professional purposes directly related to the employment in state service shall receive creditable service for the period of professional leave without compensation provided:

(a) The professional leave is performed with a public institution or public agency of this state, or another state or federal agency;

(b) The employer approves the professional leave showing the reason for granting the leave and makes a determination that the professional leave will benefit the employee and employer;

(c) Such professional leave shall not exceed two (2) years during any ten-year period of state service;

(d) The employee shall serve the employer on a full-time basis for a period of time equivalent to the professional leave period granted immediately following the termination of the leave period;

(e) The contributing member shall pay to the retirement system the actuarial cost as determined by the actuary for each year of professional leave. The provisions of this subsection are subject to the regulations of the Internal Revenue Code limitations;

(f) Such other rules and regulations consistent herewith as the board may adopt and in case of question, the board shall have final power to decide the questions.

Any actively contributing member participating in the School Administrator Sabbatical Program established in Section 37-9-77 shall qualify for continued participation under this subsection (9).

(10) Any member of the Public Employees' Retirement System who became a member of the system before July 1, 2007, and has at least four (4) years of credited membership service, or who became a member of the system on or after July 1, 2007, and has at least eight (8) years of credited membership service, shall be entitled to receive a maximum of ten (10) years creditable service for:

(a) Any service rendered as an employee of any political subdivision of this state, or any instrumentality thereof, that does not participate in the Public Employees' Retirement System; or

(b) Any service rendered as an employee of any political subdivision of this state, or any instrumentality thereof, that participates in the Public Employees' Retirement System but did not elect retroactive coverage; or

(c) Any service rendered as an employee of any political subdivision of this state, or any instrumentality thereof, for which coverage of the employee's position was or is excluded; provided that the member pays into the retirement system the actuarial cost as determined by the actuary for each year, or portion thereof, of such service. After a member has made full payment to the retirement system for all or any part of such service, the member shall receive creditable service for the period of such service for which full payment has been made to the retirement system.

HISTORY:

Codes, 1942, § 7446-14; Laws, 1952, ch. 299, § 14; Laws, 1960, ch. 454; Laws, 1971, ch. 478, § 2; Laws, 1973, ch. 450, § 2; Laws, 1980, ch. 481, § 3; Laws, 1981, ch. 347, § 1; Laws, 1984, ch. 481; Laws, 1987, ch. 440; Laws, 1990, ch. 467, § 1; Laws, 1990, ch. 465, § 1; Laws, 1992, ch. 576, § 2; Laws, 1994, ch. 601, § 3, 1995, ch. 624, § 2; Laws, 1996, ch. 472, § 3; Laws, 1997, ch. 545, § 28; Laws, 1999, ch. 544, § 1; Laws, 2001, ch. 438, § 1; Laws, 2002, ch. 627, § 7; Laws, 2007, ch. 407, § 3; Laws, 2010, ch. 1, 1st Ex Sess § 2; Laws, 2016, ch. 397, § 5; Laws, 2017, ch. 338, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (6), as amended by Laws of 2002, ch. 627. A comma was inserted after the word "Forces" so that the phrase reads "service on active duty in the Armed Forces, in the Commissioned Corps of the United States Public Health Service prior to 1972 or in such maritime service, ..." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Amendment Notes —

The 2010 1st Extraordinary Session amendment added the fourth paragraph in (2).

The 2017 amendment deleted the former next-to-last sentence of (10)(c), which read: "Payment for such service may be made in increments of one-quarter (¼) year of creditable service."

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Definitions of terms used in public employees' retirement system act, see § 25-11-103.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Leaves for teachers, certified employees, and non-certified employees; substitute teachers, see § 37-7-307.

Federal Aspects—

Sections 414 and 415 of the Internal Revenue Code, see 26 USCS §§ 414 and 415.

OPINIONS OF THE ATTORNEY GENERAL

Municipal judges may be eligible for membership in the PERS system as municipal employees pursuant to the above statute. 1991 Miss. Op. Att'y Gen. 734.

No state employee may be granted Retirement System credit for more than one day of creditable service for each calendar day, regardless of number of hours worked or number of positions held. 1992 Miss. Op. Att'y Gen. 1004.

Reading Miss. Code Sections 25-11-103 and 25-11-109 in pari materia, any member of retirement system who terminated during year should be allowed to report no more than amount equal to maximum monthly amount of $10,416.66 (based on maximum annual amount of $125,000) times number of months worked during fiscal year; thus, upon termination, if member has not been reported on maximum monthly amount for each month of service during fiscal year, then part or all of lump-sum payment for unused leave could be reported to system up to allowable proportionate part of maximum for service performed during fiscal year. 1993 Miss. Op. Att'y Gen. 109.

Where legal school term is from August 15 through May 25 and employee terminates on January 31, employee would receive credit for months of August through January or total of 6 months, and would receive creditable service for one-half year in accordance with Miss. Code Section 25-11-109(2); this individual would receive credit for month of August based on being employed for fifteen days as required by statute. 1993 Miss. Op. Att'y Gen. 350.

Where legal school term is from August 25 through June 2 and employee terminates effective May 31, employee would receive credit for months of September through May or nine months, and would receive three-quarters of year of creditable service in accordance with Miss. Code Section 25-11-109(2). 1993 Miss. Op. Att'y Gen. 350.

Where nine-month school employee is unable to fulfill contract for legal school term, and is docked for one week's pay, but later signs summer school contract and works fifteen days in month of June, employee would receive credit for nine months for school term (working for three weeks during month would still entitle employee to credit for month), and then would receive credit for month during month of June for total of ten months; under Miss. Code Section 25-11-109(2), employee would receive credit for year for ten months service during fiscal year; in other words, employee will be entitled to one year of service credit where such employee has been employed and rendered service for full school term. 1993 Miss. Op. Att'y Gen. 350.

Section 37-19-1(k) [repealed] governs teaching experience for pay purposes on incremental pay scale set out at Section 37-19-7 and 37-19-17 [repealed]; retirement credit is separate question and is governed by Section 25-11-109(2); where school employee does not render services for full, legal term, then 25-11-109(2) provides that credit for partial years of service may be acquired for retirement purposes in one-quarter year increments. 1993 Miss. Op. Att'y Gen. 798.

Determination of whether school employee rendered service for legal school term to extent necessary to qualify for year of service credit must be made by System based on information reported by employer consistent with underlying facts; if employment contract for legal school term has been terminated or abandoned prior to completion, or if services required under contract have not actually been performed, then school employee would not be entitled to creditable service of one year and creditable service would be calculated in accordance with schedule provided within section 25-11-109(2). 1994 Miss. Op. Att'y Gen. 20.

Board of Trustees of the System may employ mathematical formula based on compensation paid to create presumption that employment contract for legal school term was completed in order to support finding that service for legal school term was rendered, absent any information to the contrary being reported by employer; awarding of creditable service on this basis is conditional and if, at later date, it is determined that underlying facts are not consistent with presumption, then service credit would be recalculated and awarded in accordance with statutory schedule. 1994 Miss. Op. Att'y Gen. 20.

There appears to be no statutory provision which provides for the granting and accumulation of leave for elected officials, except for retirement purposes under section 25-11-109. 1995 Miss. Op. Att'y Gen. 57.

Absent an express statutory provision otherwise, under Section 25-11-109(2) an individual serving as an appointed or elected official during a period in which no compensation was paid would not be eligible for creditable service in the Public Employees' Retirement System. 1996 Miss. Op. Att'y Gen. 472.

Pursuant to Section 25-11-109(2), elected officials in the town of Itta Bena, who are not paid on a per diem basis, are covered under the Public Employees' Retirement System. 1996 Miss. Op. Att'y Gen. 540.

School attendance officers, as covered employees, also are allowed to count unused sick leave toward creditable service for purposes of the retirement system pursuant to the provisions Sections 25-11-103 and 25-11-109. 1996 Miss. Op. Att'y Gen. 505.

Upon termination of employment, each school attendance officer's unused personal leave in excess of thirty days shall be counted as creditable service for the purposes of the retirement system. See Sections 25-11-103 and 25-11-109. 1996 Miss. Op. Att'y Gen. 505.

After compulsory school attendance officers were deemed to be state employees, any accrued leave in excess of 30 days could be transferred to the Public Employees' Retirement System as service credit, provided a valid leave policy had been adopted and that said policy was identical to the provisions of §§ 25-11-103 and 25-11-109. 1998 Miss. Op. Att'y Gen. 314.

Elected officials are not covered under a separate leave policy established for their employees. 2001 Miss. Op. Att'y Gen. 46.

School board members are not eligible for coverage in the Public Employees' Retirement System. 2005 Miss. Op. Att'y Gen. 224.

RESEARCH REFERENCES

Am. Jur.

60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1619, 1631, 1712.

§ 25-11-110. Inclusion of deceased member's period of qualified military service for vesting purposes; survivors entitled to certain additional benefits; treatment of differential wage payments as compensation under certain circumstances.

(1) With respect to the death of a member that occurs while the member is performing qualified military service within the meaning of Section 414(u) of the Internal Revenue Code:

(a) The deceased member's period of qualified military service must be counted for vesting purposes.

(b) To the extent required by Section 401(a)(37) of the Internal Revenue Code, the deceased member's survivors are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as those purchase rights the deceased member could have exercised under Section 25-11-109(7).

(2) To the extent required by Section 414(u)(12) of the Internal Revenue Code, a member receiving differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue Code from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on an annual addition under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

HISTORY:

Laws, 2016, ch. 397, § 1, eff from and after July 1, 2016.

Federal Aspects—

Section 401(a)(37) of the Internal Revenue Code is codified as 26 USCS § 401(a)(37).

Section 414(u) and 414(u)(12) of the Internal Revenue Code are codified as 26 USCS § 414(u) and 26 USCS § 414(u)(12), respectively.

Section 3401(h)(2) of the Internal Revenue Code is codified as 26 USCS § 3401(h)(2).

§ 25-11-111. Superannuation retirement.

(a)(1) Any member who became a member of the system before July 1, 2007, upon withdrawal from service upon or after attainment of the age of sixty (60) years who has completed at least four (4) years of membership service, or any member who became a member of the system before July 1, 2011, upon withdrawal from service regardless of age who has completed at least twenty-five (25) years of creditable service, shall be entitled to receive a retirement allowance, which shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(2) Any member who became a member of the system on or after July 1, 2007, upon withdrawal from service upon or after attainment of the age of sixty (60) years who has completed at least eight (8) years of membership service, or any member who became a member of the system on or after July 1, 2011, upon withdrawal from service regardless of age who has completed at least thirty (30) years of creditable service, shall be entitled to receive a

retirement allowance, which shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(b)(1) Any member who became a member of the system before July 1, 2007, whose withdrawal from service occurs before attaining the age of sixty (60) years who has completed four (4) or more years of membership service and has not received a refund of his accumulated contributions, shall be entitled to receive a retirement allowance, beginning upon his attaining the age of sixty (60) years, of the amount earned and accrued at the date of withdrawal from service. The retirement allowance shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(2) Any member who became a member of the system on or after July 1, 2007, whose withdrawal from service occurs before attaining the age of sixty (60) years who has completed eight (8) or more years of membership service and has not received a refund of his accumulated contributions, shall be entitled to receive a retirement allowance, beginning upon his attaining the age of sixty (60) years, of the amount earned and accrued at the date of withdrawal from service. The retirement allowance shall begin on the first of the month following the date the member's application for the allowance is received by the board, but in no event before withdrawal from service.

(c) Any member in service who has qualified for retirement benefits may select any optional method of settlement of retirement benefits by notifying the Executive Director of the Board of Trustees of the Public Employees' Retirement System in writing, on a form prescribed by the board, of the option he has selected and by naming the beneficiary of the option and furnishing necessary proof of age. The option, once selected, may be changed at any time before actual retirement or death, but upon the death or retirement of the member, the optional settlement shall be placed in effect upon proper notification to the executive director.

(d) Any member who became a member of the system before July 1, 2011, shall be entitled to an annual retirement allowance which shall consist of:

(1) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement computed according to the actuarial table in use by the system; and

(2) An employer's annuity, which, together with the member's annuity provided above, shall be equal to two percent (2%) of the average compensation for each year of service up to and including twenty-five (25) years of creditable service, and two and one-half percent (2-½%) of the average compensation for each year of service exceeding twenty-five (25) years of creditable service.

(3) Any retired member or beneficiary thereof who was eligible to receive a retirement allowance before July 1, 1991, and who is still receiving a retirement allowance on July 1, 1992, shall receive an increase in the annual retirement allowance of the retired member equal to one-eighth of one percent (⅛ of 1%) of the average compensation for each year of state

service in excess of twenty-five (25) years of membership service up to and including thirty (30) years. The maximum increase shall be five-eighths of one percent (⅝ of 1%). In no case shall a member who has been retired before July 1, 1987, receive less than Ten Dollars ($10.00) per month for each year of creditable service and proportionately for each quarter year thereof. Persons retired on or after July 1, 1987, shall receive at least Ten Dollars ($10.00) per month for each year of service and proportionately for each quarter year thereof reduced for the option selected. However, such Ten Dollars ($10.00) minimum per month for each year of creditable service shall not apply to a retirement allowance computed under Section 25-11-114 based on a percentage of the member's average compensation.

(e) Any member who became a member of the system on or after July 1, 2011, shall be entitled to an annual retirement allowance which shall consist of:

(1) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement computed according to the actuarial table in use by the system; and

(2) An employer's annuity, which, together with the member's annuity provided above, shall be equal to two percent (2%) of the average compensation for each year of service up to and including thirty (30) years of creditable service, and two and one-half percent (2-½%) of average compensation for each year of service exceeding thirty (30) years of creditable service.

(f) Any member who became a member of the system on or after July 1, 2011, upon withdrawal from service upon or after attaining the age of sixty (60) years who has completed at least eight (8) years of membership service, or any such member upon withdrawal from service regardless of age who has completed at least thirty (30) years of creditable service, shall be entitled to receive a retirement allowance computed in accordance with the formula set forth in subsection (e) of this section. In the case of the retirement of any member who has attained age sixty (60) but who has not completed at least thirty (30) years of creditable service, the retirement allowance shall be computed in accordance with the formula set forth in subsection (e) of this section except that the total annual retirement allowance shall be reduced by an actuarial equivalent factor for each year of creditable service below thirty (30) years or the number of years in age that the member is below age sixty-five (65), whichever is less.

(g) No member, except members excluded by the Age Discrimination in Employment Act Amendments of 1986 (Public Law 99-592), under either Article 1 or Article 3 in state service shall be required to retire because of age.

(h) No payment on account of any benefit granted under the provisions of this section shall become effective or begin to accrue until January 1, 1953.

(i)(1) A retiree or beneficiary may, on a form prescribed by and filed with the retirement system, irrevocably waive all or a portion of any benefits from the retirement system to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the Public Employees' Retirement System of Mississippi from any claim to the waived retirement benefits.

(2) Any waiver under this subsection shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement. However, a beneficiary may, at the option of the beneficiary, execute a waiver of benefits under this subsection.

(3) The retirement system shall retain in the annuity reserve account amounts that are not used to pay benefits because of a waiver executed under this subsection.

(4) The board of trustees may provide rules and regulations for the administration of waivers under this subsection.

HISTORY:

Codes, 1942, § 7446-15; Laws, 1952, ch. 299, § 15; Laws, 1956, ch. 347; Laws, 1960, ch. 453, § 3; Laws, 1966, ch. 618, § 1; Laws, 1968, ch. 578, § 2; Laws, 1971, ch. 478, § 3; Laws, 1973, ch. 450, § 3; Laws, 1975, ch. 511; Laws, 1980, ch. 481, § 4; Laws, 1985, ch. 504, § 2; Laws, 1986, ch. 473; Laws, 1987, ch. 325, § 1; Laws, 1989, ch. 303, § 1; Laws, 1991, ch. 513, § 4; Laws, 1999, ch. 590, § 1; Laws, 2000, ch. 628, § 7; Laws, 2007, ch. 407, § 4; Laws, 2010, ch. 389, § 1; Laws, 2011, ch. 469, § 1; Laws, 2016, ch. 397, § 6, eff from and after July 1, 2016.

Editor's Notes —

On April 16, 1991, the Board of Trustees of the Public Employees' Retirement System, by resolution duly spread upon its minutes, certified that the amendment of this section by Laws of 1991, ch. 513, is actuarially sound, taking into consideration, among other criteria deemed relevant by the board, any increases in employee contributions proposed by Laws of 1991, ch. 513.

Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Prohibition against discrimination as to person seeking employment in state service, or employed in state service, on basis of race, color, religion, sex, national origin, age or handicap, see § 25-9-149.

Definitions of terms used in public employees' retirement system act, see § 25-11-103.

Payment of retirement benefits to surviving beneficiaries, see § 25-11-114.

Relevance of minimum retirement allowance in determining maximum annual retirement allowance attributable to employer contributions, see § 25-11-133.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Federal Aspects—

Age Discrimination in Employment Act, see 29 USCS §§ 621 et seq.

OPINIONS OF THE ATTORNEY GENERAL

While member of retirement system who retired prior to July 1, 1987 may himself be entitled to minimum benefit under law based on current selection of option, where subsequent election is made available to him on actuarial equivalent basis, such subsequent election would be subject to actuarial adjustment and would thereby reduce minimum benefits that might otherwise be payable under Section 25-11-115. 1993 Miss. Op. Att'y Gen. 400.

Under Sections 25-11-103 and 25-11-111, there must be a complete severance of employment in the state service by resignation, dismissal or discharge, prior to being eligible for the payment of service retirement benefits. 1995 Miss. Op. Att'y Gen. 99.

RESEARCH REFERENCES

ALR.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

Age discrimination claimant's right to suit in federal court as affected by manner and timeliness of claimant's resort to state remedies under § 14(b) of Age Discrimination in Employment Act (29 USCS § 633(b)). 56 A.L.R. Fed. 627.

Job discrimination against unwed mothers or unwed pregnant women as proscribed under Pregnancy Discrimination Act (42 USCS § 2000e(k)). 91 A.L.R. Fed. 178.

Pension plan designed to induce early retirement of employees of certain age as violation of Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) or ERISA (29 USCS §§ 1001 et seq). 91 A.L.R. Fed. 296.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 93 A.L.R. Fed. 10.

Am. Jur.

60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1619, 1631, 1712.

19A Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 3 (complaint or declaration for judicial declaration of effect of statute barring one's receipt of separate pensions from separate governmental subdivisions).

29 Am. Jur. Trials 1, Age Discrimination in Employment Action under ADEA.

§ 25-11-111.1. Payment of retirement benefits by the most appropriate means as determined by the board.

The Public Employees' Retirement System shall make payments of retirement benefits under this chapter to members and to the beneficiaries of those members, by whatever means the board prescribes by regulation to be the most appropriate for the proper and efficient payment of benefits, including, but not limited to, direct deposit to an account with a financial institution that is a participant of the Automated Clearing House designated by the member or beneficiary. The board may provide for alternative means of payment if the member or beneficiary can demonstrate that payment by the prescribed means will cause the member or beneficiary undue hardship.

HISTORY:

Laws, 2002, ch. 627, § 2; Laws, 2016, ch. 397, § 7, eff from and after July 1, 2016.

§ 25-11-112. Additional annual payment to retirees and beneficiaries.

(1) Any member who is receiving a retirement allowance for service or disability retirement, or any beneficiary thereof, who has received a monthly benefit for at least one (1) full fiscal year, shall be eligible to receive an additional benefit, on December 1 or July 1 of the year as provided in subsection (3) of this section, equal to an amount calculated under paragraph (a) or (b) below:

(a) For any member who became a member of the system before July 1, 2011, the sum of:

(i) An amount equal to three percent (3%) of the annual retirement allowance multiplied by the number of full fiscal years in retirement before the end of the fiscal year in which the member reaches age fifty-five (55), plus

(ii) An additional amount equal to three percent (3%) compounded by the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age fifty-five (55), multiplied by the amount of the annual retirement allowance.

(b) For any member who became a member of the system on or after July 1, 2011, the sum of:

(i) An amount equal to three percent (3%) of the annual retirement allowance multiplied by the number of full fiscal years in retirement before the end of the fiscal year in which the member reaches age sixty (60), plus

(ii) An additional amount equal to three percent (3%) compounded by the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60), multiplied by the amount of the annual retirement allowance.

(2) The calculation of the beneficiary's additional benefit under subsection (1)(a) or (b) of this section shall be based on the member's age and full fiscal years in retirement as if the member had lived.

(3)(a) The additional benefit provided for under this section shall be paid in one (1) payment in December of each year to those persons who are receiving a retirement allowance on December 1 of that year, unless an election is made under this subsection. However, if a retiree who is receiving a retirement allowance that will terminate upon the retiree's death is receiving the additional benefit in one (1) payment and dies on or after July 1 but before December 1, the beneficiary designated on the retirement application, if any, shall receive in a single payment a fractional part of the additional benefit based on the number of months in which a retirement allowance was received during the fiscal year. Likewise, if a retiree is receiving a retirement allowance that will terminate upon his or her death in two (2) to six (6) monthly installments, any remaining payments of the additional benefit will be paid in a lump sum to the beneficiary designated on the application, or if none, pursuant to Section 25-11-117.1(1). Any similar remaining payments of additional benefits payable under this section to a deceased beneficiary who was receiving a monthly benefit shall be payable in accordance with the provisions of Section 25-11-117.1(2). If the additional monthly benefit is being received in one (1) payment, the additional benefit shall also be prorated based on the number of months in which a retirement allowance was received during the fiscal year when (i) the monthly benefit payable to a beneficiary terminates due to the expiration of an option, remarriage or cessation of dependent status or due to the retiree's return to covered employment, and (ii) the monthly benefit terminates on or after July 1 and before December 1. The board may, in its discretion, allow a retired member or a beneficiary thereof who is receiving the additional annual payment in the manner provided for in this paragraph to change the manner in which the additional annual payment is received to that provided for in paragraph (b) of this subsection if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional annual payment as provided for in this paragraph will cause a financial hardship to the retired member or beneficiary.

(b) Retired members or beneficiaries thereof who on July 1, 1999, or July 1 of any fiscal year thereafter, are receiving a retirement allowance, may elect by an irrevocable agreement in writing filed in the Office of the Public Employees' Retirement System no less than thirty (30) days before July 1 of the appropriate year, to begin receiving the additional benefit provided for under this section in twelve (12) equal monthly installments beginning July 1, 1999, or July 1 of any fiscal year thereafter. This irrevocable agreement shall be binding on the member and subsequent beneficiaries. Payment of those monthly installments shall not extend beyond the month in which a retirement allowance is due and payable. The board may, in its discretion, allow a retired member or a beneficiary thereof who is receiving the additional annual payment in the manner provided for in this paragraph to change the manner in which the additional annual payment is received to that provided for in paragraph (a) of this subsection if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional annual payment as provided for in this paragraph will cause a financial hardship to the retired member or beneficiary.

(4) The additional payment or payments provided for under this section are for the fiscal year in which they are paid.

(5)(a) The amount provided for under subsection (1)(a)(ii) of this section is calculated using the following formula:

$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

where ^{n} is the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age fifty-five (55).

(b) The amount provided for under subsection (1)(b)(ii) of this section is calculated using the following formula:

$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

where ^{n} is the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60).

(6) Any retired member or beneficiary thereof who has previously elected to receive the additional annual payment in monthly installments may elect, upon application on a form prescribed by the board of trustees, to have that payment made in one (1) additional payment each year. This written election must be filed in the Office of the Public Employees' Retirement System before June 1, 2000, and shall be effective for the fiscal year beginning July 1, 2000.

(7) In the event of death of a retired member or a beneficiary thereof who is receiving the additional annual payment in two (2) to six (6) monthly installments pursuant to an election made before July 1, 1999, and who would otherwise be eligible to receive the additional benefit provided for under this

section in one (1) payment in December of the current fiscal year, any remaining amounts shall be paid in a lump sum to the designated beneficiary.

(8) When a member retires after July 1 and has previously received a retirement allowance for one or more full fiscal years, the retired member shall be eligible immediately for the additional benefit. The additional benefit shall be based on the current retirement allowance and the number of full fiscal years in retirement and shall be prorated and paid in monthly installments based on the number of months a retirement allowance is paid during the fiscal year.

HISTORY:

Laws, 1980, ch. 481, § 5; Laws, 1982, ch. 382; Laws, 1984, ch. 310; Laws, 1985, ch. 504, § 3; Laws, 1990, ch. 400, § 1; Laws, 1994, ch. 601, § 4; Laws, 1999, ch. 590, § 2; Laws, 2000, ch. 628, § 12; Laws, 2002, ch. 627, § 8; Laws, 2011, ch. 469, § 2, eff from and after July 1, 2011.

Editor's Notes —

Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Lawful spouse as beneficiary of member absent other designation subsequent to marriage, see § 25-11-103.

Written filing of beneficiary designation, see § 25-11-103.

Deferred disability allowance for member on disability retirement to be adjusted in accordance with this section, see § 25-11-113.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Application of the Consumer Price Index of the United States government in determining retirement allowance for highway patrolmen, see § 25-13-12.

§ 25-11-113. Disability retirement.

(1)(a) Upon the application of a member or his employer, any active member in state service who became a member of the system before July 1, 2007, and who has at least four (4) years of membership service credit, or any active member in state service who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service credit, may be retired by the board of trustees on the first of the month following the date of filing the application on a disability retirement allowance, but in no event shall the disability retirement allowance begin before termination of state service, provided that the medical board, after an evaluation of medical evidence that may or may not include an actual physical examination by the medical board, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired; however, the board of trustees may accept a disability medical determination from the Social Security Administration in lieu of a certification from the medical board. If a member who has been approved for a disability retirement allowance does not terminate state service within ninety (90) days after approval, the disability retirement and the application for disability retirement shall be void. For the purposes of disability determination, the medical board shall apply the following definition of disability: the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System (Section 25-11-101 et seq.) that is actually offered and is within the same general territorial work area, without material reduction in compensation. The employer shall be required to furnish the job description and duties of the member. The employer shall further certify whether the employer has offered the member other duties and has complied with the applicable provisions of the Americans With Disabilities Act in affording reasonable accommodations that would allow the employee to continue employment.

(b) Any member applying for a disability retirement allowance must provide sufficient objective medical evidence in support of his or her claim. All disability determinations, whether the initial examination or reexamination, shall be based on objective medical evidence. "Objective medical evidence" means reports of examinations or treatments; medical signs that are anatomical, physiological, or psychological abnormalities that are observed and documented by medical professionals; psychiatric signs that are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings that are anatomical, physiological, or psychological phenomena that are shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests. Nonmedical information shall not be considered objective medical evidence.

(c) Any inactive member who became a member of the system before July 1, 2007, with four (4) or more years of membership service credit, or any inactive member who became a member of the system on or after July 1, 2007, with eight (8) or more years of membership service credit, who has withdrawn from active state service, is not eligible for a disability retirement allowance unless the disability occurs within six (6) months of the termination of active service and unless satisfactory proof is presented to the board of trustees that the disability was the direct cause of withdrawal from state service. Application for a disability retirement allowance must be filed within one (1) year of termination from active service. This period may be extended by an additional year if it can be factually demonstrated to the satisfaction of the board of trustees that throughout the initial one-year period the member was incapable of applying for benefits by reason of mental or physical impairment as certified by a medical doctor.

(d) Any member who is or becomes eligible for service retirement benefits under Section 25-11-111 while pursuing a disability retirement allowance under this section or Section 25-11-114 may elect to receive a service retirement allowance pending a final determination on eligibility for a disability retirement allowance or withdrawal of the application for the disability retirement allowance. In such a case, an application for a disability retirement allowance must be on file with the system before the beginning of a service retirement allowance. If the application is approved, the option selected and beneficiary designated on the retirement application shall be used to determine the disability retirement allowance. If the application is not approved or if the application is withdrawn, the service retirement allowance shall continue to be paid in accordance with the option selected. No person may apply for a disability retirement allowance after the person begins to receive a service retirement allowance.

(e) If the medical board certifies that the member is not mentally or physically incapacitated for the future performance of duty, the member may request, within sixty (60) days, a hearing before the hearing officer as provided in Section 25-11-120. All hearings shall be held in accordance with rules and regulations adopted by the board to govern those hearings. The hearing may be closed upon the request of the member.

(f) The medical board may request additional medical evidence and/or other physicians to conduct an evaluation of the member's condition. If the medical board requests additional medical evidence and the member refuses the request, the application shall be considered void.

(2) Allowance on disability retirement.

(a) Upon retirement for disability, an eligible member shall receive a retirement allowance if he has attained the age of sixty (60) years.

(b) Except as provided in paragraph (c) of this subsection (2), an eligible member who is retired for disability and who has not attained sixty (60) years of age shall receive a disability benefit as computed in Section 25-11-111(d), which shall consist of:

(i) A member's annuity, which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(ii) An employer's annuity equal to the amount that would have been payable as a retirement allowance for eligible creditable service if the member had continued in service to the age of sixty (60) years, which shall apply to the allowance for disability retirement paid to retirees receiving such allowance upon and after April 12, 1977. This employer's annuity shall be computed on the basis of the average "earned compensation" as defined in Section 25-11-103.

(c) For persons who become members after June 30, 1992, and for active members on June 30, 1992, who elect benefits under this paragraph (c) instead of those provided under paragraph (b) of this subsection (2), the disability allowance shall consist of two (2) parts: a temporary allowance and a deferred allowance.

The temporary allowance shall equal the greater of (i) forty percent (40%) of average compensation at the time of disability, plus ten percent (10%) of average compensation for each of the first two (2) dependent children, as defined in Sections 25-11-103 and 25-11-114, or (ii) the accrued benefit based on actual service. It shall be payable for a period of time based on the member's age at disability, as follows:

Age at Disability	Duration
60 and earlier	to age 65
61	to age 66
62	to age 66
63	to age 67
64	to age 67
65	to age 68
66	to age 68
67	to age 69
68	to age 70
69 and over	one year

The deferred allowance shall begin when the temporary allowance ends and shall be payable for life. The deferred allowance shall equal the greater of (i) the allowance that would have been payable had the member continued in service to the termination age of the temporary allowance, but no more than forty percent (40%) of average compensation, or (ii) the accrued benefit based on actual service at the time of disability. The deferred allowance as determined at the time of disability shall be adjusted in accordance with Section 25-11-112 for the period during which the temporary annuity is payable. In no case shall a member receive less than Ten Dollars ($10.00) per month for each year of service and proportionately for each quarter year thereof reduced for the option selected.

(d) The member may elect to receive the actuarial equivalent of the disability retirement allowance in a reduced allowance payable throughout life under any of the provisions of the options provided under Section 25-11-115.

(e) If a disability retiree who has not selected an option under Section 25-11-115 dies before being repaid in disability benefits the sum of his total contributions, then his named beneficiary shall receive the difference in cash, which shall apply to all deceased disability retirees from and after January 1, 1953.

(3) Reexamination of retirees retired on account of disability. Except as otherwise provided in this section, once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every period of three (3) years thereafter, the board of trustees may, and upon his application shall, require any disability retiree who has not yet attained the age of sixty (60) years or the termination age of the temporary allowance under subsection (2)(c) of this section to undergo a medical examination, the examination to be made at the place of residence of the retiree or other place mutually agreed upon by a physician or physicians designated by the board. The board, however, in its discretion, may authorize the medical board to establish reexamination schedules appropriate to the medical condition of individual disability retirees. If any disability retiree who has not yet attained the age of sixty (60) years or the termination age of the temporary allowance under subsection (2)(c) of this section refuses to submit to any medical examination provided in this section, his allowance may be discontin-

ued until his withdrawal of that refusal; and if his refusal continues for one (1) year, all his rights to a disability benefit shall be revoked by the board of trustees.

(4) If the medical board reports and certifies to the board of trustees, after a comparable job analysis or other similar study, that the disability retiree is engaged in, or is able to engage in, a gainful occupation paying more than the difference between his disability allowance, exclusive of cost-of-living adjustments, and the average compensation, and if the board of trustees concurs in the report, the disability benefit shall be reduced to an amount that, together with the amount earnable by him, equals the amount of his average compensation. If his earning capacity is later changed, the amount of the benefit may be further modified, provided that the revised benefit shall not exceed the amount originally granted. A retiree receiving a disability benefit who is restored to active service at a salary less than the average compensation shall not become a member of the retirement system.

(5) If a disability retiree under the age of sixty (60) years or the termination age of the temporary allowance under subsection (2)(c) of this section is restored to active service at a compensation not less than his average compensation, his disability benefit shall end, he shall again become a member of the retirement system, and contributions shall be withheld and reported. Any such prior service certificate, on the basis of which his service was computed at the time of retirement, shall be restored to full force and effect. In addition, upon his later retirement he shall be credited with all creditable service as a member, but the total retirement allowance paid to the retired member in his previous retirement shall be deducted from his retirement reserve and taken into consideration in recalculating the retirement allowance under a new option selected.

(6) If following reexamination in accordance with the provisions contained in this section, the medical board determines that a retiree retired on account of disability is physically and mentally able to return to the employment from which he is retired, the board of trustees, upon certification of those findings from the medical board, shall, after a reasonable period of time, terminate the disability allowance, whether or not the retiree is reemployed or seeks that reemployment. In addition, if the board of trustees determines that the retiree is no longer sustaining a loss of income as established by documented evidence of the retiree's earned income, the eligibility for a disability allowance shall terminate and the allowance terminated within a reasonable period of time. If the retirement allowance is terminated under the provisions of this section, the retiree may later qualify for a retirement allowance under Section 25-11-111 based on actual years of service credit plus credit for the period during which a disability allowance was paid.

(7) Any current member as of June 30, 1992, who retires on a disability retirement allowance after June 30, 1992, and who has not elected to receive benefits under subsection (2)(c) of this section, shall relinquish all rights under the Age Discrimination in Employment Act of 1967, as amended, with regard to the benefits payable under this section.

HISTORY:

Codes, 1942, § 7446-16; Laws, 1952, ch. 299, § 16; Laws, 1968, ch. 578, § 3; Laws, 1977, ch. 450, § 3; Laws, 1978, ch. 382, § 1; Laws, 1986, ch. 472, § 1; Laws, 1991, ch. 513, § 5; Laws, 1992, ch. 576, § 4; Laws, 1993, ch. 617, § 5, 1995, ch. 627, § 3; Laws, 1996, ch. 472, § 4; Laws, 2002, ch. 627, § 9; Laws, 2007, ch. 407, § 5; Laws, 2011, ch. 469, § 3; Laws, 2016, ch. 397, § 10, eff from and after July 1, 2016.

Editor's Notes —

Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Lawful spouse as beneficiary of member absent other designation subsequent to marriage, see § 25-11-103.

Written filing of beneficiary designation, see § 25-11-103.

What constitutes creditable service, see § 25-11-109.

Retirement allowance for death or disability in line of duty, see § 25-11-114.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Federal Aspects—

Age Discrimination in Employment Act of 1967, see 29 USCS §§ 621 et seq.

Americans With Disabilities Act, see 42 USCS §§ 12101 et seq.

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4. Judicial review.

1. Evidence.

One physician's opinion is not rendered incompetent or invalid just because another physician later offers different or additional opinions; the persuasiveness of the doctors' respective opinions is a matter for the Public Employees' Retirement System to determine, not a reviewing court. Davidson v. Public Emples. Ret. Sys. of Miss., 219 So. 3d 577, 2017 Miss. App. LEXIS 277 (Miss. Ct. App. 2017).

Circuit court did not err in affirming the decision of the Public Employees' Retirement System (PERS) to deny a state employee's request for continued non-duty-related disability benefits because substantial evidence supported PERS's finding that the employee was capable of returning to work and was no longer disabled; a psychiatrist found no compelling clinical evidence that the employee would be unable to handle the stresses and demands of appropriate employment. Davidson v. Public Emples. Ret. Sys. of Miss., 219 So. 3d 577, 2017 Miss. App. LEXIS 277 (Miss. Ct. App. 2017).

Decision to deny a guidance counselor Public Employees' Retirement System non-duty related disability benefits was supported by substantial evidence because the counselor failed to present any medical evidence showing she likely suffered a permanent disability; a doctor opined that the counselor's joint pain, depression, and anxiety could be managed with appropriate treatment, and she did not believe the counselor's medical problems met the criteria for permanent disability. Dearman v. Public Emples. Ret. Sys. of Miss., 205 So. 3d 1100, 2016 Miss. App. LEXIS 798 (Miss. Ct. App. 2016).

Decision of the Public Employees' Retirement System of Mississippi to deny an employee duty-related retirement benefits was based on substantial evidence and was not arbitrary of capricious because its conclusion that the employee was not permanently disabled was consistent with testimony from multiple healthcare providers; the employee's doctors failed to establish that her complaints were supported by medical findings, and she continued to work for five years after she twisted her ankle. Public Emples. Ret. Sys. of Miss. v. Comardelle, 210 So. 3d 984, 2015 Miss. App. LEXIS 143 (Miss. Ct. App. 2015).

Doctor's statements that a former state employee could not continue the tasks required of her job (walking long distances) due to severe foot pain and that she was at a maximum medical improvement was sufficient medical evidence under Miss. Code Ann. § 25-11-113(1)(a) (Supp. 2012) to show that she was physically incapacitated for the job she was employed to do, that it was likely permanent, and that she should be retired. Knight v. Public Emples. Ret. Sys. of Miss., 108 So. 3d 912, 2012 Miss. LEXIS 611 (Miss. 2012).

As experts disagreed as to whether appellee was disabled by fibromyalgia and other ailments, and as there was sufficient medical evidence contradicting her disability claims, substantial evidence supported the Mississippi Public Employees' Retirement System's denial of both regular and duty-related benefits under Miss. Code Ann. § 25-11-113 and 25-11-114. Public Emples. Ret. Sys. v. Walker, 126 So. 3d 904, 2012 Miss. App. LEXIS 808 (Miss. Ct. App. 2012), rev'd, in part, 126 So. 3d 892, 2013 Miss. LEXIS 620 (Miss. 2013).

Pursuant to Miss. Code Ann. § 25-11-113(1)(a), the denial of disability benefits to an applicant, a former teacher, was not supported by substantial evidence where one doctor stated that rheumatoid arthritis prevented the applicant from performing her job duties and other doctors stated that the condition limited her ability to stand and write continuously. Moreover, the applicant's principal certified that she was unable to perform her job duties, which frequently required standing and writing. Public Emples. Ret. Sys. v. Worlow, 172 So. 3d 745, 2011 Miss. App. LEXIS 370 (Miss. Ct. App. 2011).

Decision of the Public Employees' Retirement System of Mississippi (PERS) denying non-duty related disability benefits to a claimant as PERS's decision was not supported by substantial evidence and, thus, was properly reversed. The evidence showed that the claimant was disabled under Miss. Code Ann. § 25-11-113(1)(a) (Rev. 2006) as her ankle pain interfered with her job duties, which required her to be on her feet 95 percent of the time, and that the accommodations offered were not adequate for the performance of the job, in that the claimant could not effectively perform her duties while sitting. Public Emples. Ret. Sys. v. McDonnell, 70 So. 3d 264, 2011 Miss. App. LEXIS 186 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 456 (Miss. 2011).

Employee's application for hurt-on-the-job disability benefits, filed pursuant to Miss. Code Ann. §§ 25-11-113 and 25-11-114, was properly denied because the record contained sufficient evidence to support the administrative finding that the employee was not disabled. Not all of the medical evidence and testimony supported a finding of disability; the records contained overwhelming inconsistencies in testing and symptomatology. Henley v. Public Emples. Ret. Sys., 26 So. 3d 1108, 2010 Miss. App. LEXIS 38 (Miss. Ct. App. 2010).

Overturning of an administrative decision denying disability benefits to an employee was appropriate pursuant to Miss. Code Ann. § 25-11-113(1)(a) because a doctor had made his diagnosis of degenerative arthritis prior to the employee filing her claim in 1997. The Public Employees' Retirement System Disability Appeals Committee's rejection of the diagnosis was without support in the record based on the doctor's findings. Public Emples. Ret. Sys. v. Dishmon, 17 So. 3d 87, 2009 Miss. LEXIS 340 (Miss. 2009).

Substantial evidence, including that no doctor in an employee's case concluded that the pain that she alleged to experience prevented her from returning to work and that no doctor offered an opinion with regard to her disability, existed to affirmed the denial of the employee's request for disability benefits. Laughlin v. Public Emples. Ret. Sys., 11 So. 3d 154, 2009 Miss. App. LEXIS 301 (Miss. Ct. App. 2009).

Trial court properly overturned the Mississippi Public Employees' Retirement System's denial of disability and retirement benefits to an employee, a teacher and a bus driver, because the decision to deny benefits under Miss. Code Ann. § 25-11-113(1)(a) was not supported by substantial evidence; an internist evaluated the employee and diagnosed the employee with diabetes, cellulitis of the abdomen, and uncontrollable hypertension. Public Emples. Ret. Sys. v. Dozier, 995 So. 2d 136, 2008 Miss. App. LEXIS 640 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 384 (Miss. Aug. 13, 2009).

Circuit court erred when it improperly reweighed the medical evidence in a case in which a public employee sought disability benefits, and the circuit court relied on the impairment rating to find that the employee was disabled. Public Emples. Ret. Sys. v. Card, 994 So. 2d 239, 2008 Miss. App. LEXIS 341 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 648 (Miss. 2008).

Employee was properly denied disability retirement benefits under Miss. Code Ann. § 25-11-114(6) by the Public Employees' Retirement System of Mississippi because the evidence was sufficient to show that he was not disabled under Miss. Code Ann. § 25-11-113 based on the testimony of a treating physician. This was despite the fact that several other doctors testified otherwise. Pub. Emples. Ret. Sys. v. Dean, 983 So. 2d 335, 2008 Miss. App. LEXIS 89 (Miss. Ct. App. 2008).

Public Employees' Retirement System's (PERS) denial of disability benefits to the employee was improper because the record contained uncontradicted medical diagnoses of fibromyalgia, piriformis syndrome, Sjogren's syndrome, and depression, along with a doctor's uncontradicted opinion that the employee was disabled as a result of those four conditions. And, PERS never exercised its option to order an independent medical evaluation of the employee under Miss. Code Ann. § 25-11-113(1)(e) (now 25-11-113(1)(f)) to confirm or refute its belief. Stevison v. Public Emples. Ret. Sys., 966 So. 2d 874, 2007 Miss. App. LEXIS 709 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 673 (Miss. Dec. 4, 2008).

Public Employees' Retirement System's decision to deny benefits under Miss. Code Ann. § 25-11-113(1)(a) with regard to the employee's anxiety and depression was not supported by substantial evidence; the disability appeals committee relied on the fact that the employee had not been evaluated or treated by a psychiatrist or psychologist, but this was improper, and regardless of whether the diagnosis was secondary, the employee's primary physician stated that she was disabled as a result of depression and anxiety and medical diagnoses by licensed physicians constituted objective evidence of disability, and while the court might have found that the employee's testimony deemphasized her depression and anxiety to some extent, the committee did not rely upon this, and the employee was to be awarded the appropriate disability benefits. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

For purposes of denying disability benefits under Miss. Code Ann. § 25-11-113(1)(a), the Public Employees' Retirement System disability appeals committee's finding that the employee was not disabled as a result of arthritis or neck and arm pain was supported by substantial evidence; from a review of the medical records, the committee found that the employee's surgical intervention was considered successful and she was cleared to return to work without restrictions, plus an independent medical examination indicated that the employee was physically capable of performing her job. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

For purposes of denying benefits under Miss. Code Ann. § 25-11-113(1)(a), the Public Employees' Retirement System (PERS) disability appeals committee's decision that the employee was not disabled as a result of her fibromyalgia was supported by substantial evidence; one doctor's opinion alone was sufficient to constitute substantial evidence supporting the committee's decision, plus the committee found that virtually all of the employee's laboratory studies were normal and within acceptable limits, and most of the employee's missed work days were attributed to her complaints related to blood pressure and cardiac complaints. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

For purposes of denying disability benefits under Miss. Code Ann. § 25-11-113(1)(a), the decision of the Public Employees' Retirement System (PERS) that the employee was not permanently disabled as a result of arrhythmia was supported by substantial evidence; the PERS disability appeals committee evaluated the employee's medical records and cited specific medical evidence to support the finding that the arrhythmia was not disabling, PERS was not required to send the employee to a cardiologist in order to reject certain physician opinions, and given that the committee adequately explained its rejection of these opinions, it was not an abuse of discretion for the committee not have had the employee evaluated by a cardiologist. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

For purposes of denying disability benefits under Miss. Code Ann. § 25-11-113(1)(a), the decision of the Public Employees' Retirement System (PERS) regarding an employee's hypertension was supported by substantial evidence; although the employee's blood pressure readings might have appeared elevated to the court, it was not the court's place to substitute its judgment for that of the PERS, which found that the employee's medical records showed that the employee's blood pressure readings were within acceptable limits on most visits, and the PERS disability appeals committee sufficiently explained its conclusion that the employee's hypertension was not disabling. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

Public Employees' Retirement System's (PERS) denial of disability benefits to the employee was improper because the record contained uncontradicted medical diagnoses of fibromyalgia, piriformis syndrome, Sjogren's syndrome, and depression, along with a doctor's uncontradicted opinion that the employee was disabled as a result of those four conditions. And, PERS never exercised its option to order an independent medical evaluation of the employee under Miss. Code Ann. § 25-11-113(1)(e) (now 25-11-113(1)(f)) to confirm or refute its belief. Stevison v. Public Emples. Ret. Sys., 966 So. 2d 874, 2007 Miss. App. LEXIS 709 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 673 (Miss. Dec. 4, 2008).

Denial of non-work-related retirement disability benefits to the state employee was improper under Miss. Code Ann. § 25-11-113(1)(a) because, while the Board of the Public Employee's Retirement System of Mississippi (PERS) had disagreed with the doctors' opinions that the employee had fibromyalgia and could not work, there was no conclusive, substantial evidence contradicting those assertions; the PERS had rejected the credible evidence presented in support of the employee's disability. Thomas v. Pub. Employees' Ret. Sys., 995 So. 2d 130, 2007 Miss. App. LEXIS 435 (Miss. Ct. App. 2007), rev'd, 995 So. 2d 115, 2008 Miss. LEXIS 488 (Miss. 2008).

Disability retirement benefits under Miss. Code Ann. § 25-11-113(a) were improperly denied to a benefits claimant because a finding that her diabetes and hypertension would have improved through treatment by a hypertension expert was not supported by substantial evidence, nothing contradicted a statement from the claimant's doctor, and no independent medical examination was conducted. Public Emples. Ret. Sys. v. McClure, 968 So. 2d 510, 2007 Miss. App. LEXIS 341 (Miss. Ct. App.), cert. denied, 968 So. 2d 948, 2007 Miss. LEXIS 644 (Miss. 2007).

Where no doctors determined that a variety of illnesses kept an employee from working, the Mississippi Public Employees' Retirement System properly determined that no disability had been proven under Miss. Code Ann. § 25-11-113; moreover, reliance on the Social Security Administration's finding of disability was not required. Flowers v. Public Emples. Ret. Sys., 2006 Miss. App. LEXIS 247 (Miss. Ct. App. Apr. 4, 2006), op. withdrawn, sub. op., 952 So. 2d 972, 2006 Miss. App. LEXIS 778 (Miss. Ct. App. 2006).

Reversal of the Mississippi Public Employees' Retirement System's (PERS) denial of non-work related retirement disability benefits to the employee was improper because the circuit court substituted its own judgment for that of the administrative agency; the assessment by PERS in ruling that the employee was unqualified for non-duty related disability benefits under Miss. Code Ann. § 25-11-113 was supported by substantial evidence. Public Emples. Ret. Sys. v. Lewis, 954 So. 2d 440, 2006 Miss. App. LEXIS 822 (Miss. Ct. App. 2006).

Public employees' retirement system properly denied a former employee's claim for disability benefits; substantial evidence supported the finding that the employee was not disabled within the meaning of Miss. Code Ann. § 25-11-113(1)(a) because her medical problems were being successfully treated, the retirement system did not abuse its discretion in failing to require another medical examination pursuant to § 25-11-113(1)(e) (now 25-11-113(1)(f)), and reliance on the Social Security Administration's finding of disability was not required. Flowers v. Public Emples. Ret. Sys., 952 So. 2d 972, 2006 Miss. App. LEXIS 778 (Miss. Ct. App. 2006).

The only evidence to prove that the employee met the statutory requirements of Miss. Code Ann. § 25-11-113 was the testimony of her surgeon and retirement counsel; the opinions of the surgeon and counselor were presented to the committee and the committee made the determination what evidence to consider and how much weight the evidence should be given; the employee did not prove that the statutory criteria were met based on this evidence, and therefore was not denied any statutory right under § 25-11-113. Brakefield v. Public Emples. Ret. Sys., 940 So. 2d 945, 2006 Miss. App. LEXIS 169 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 737 (Miss. 2006).

Trial court erred in reversing administrative board's decision denying disability benefits which was based on the determination that it was not supported by substantial evidence; however, the board's decision was supported by substantial evidence, was not arbitrary and capricious, was made within the board's scope or power, and did not violate the employee's constitutional rights – the employee failed to meet her burden of proving she was in fact disabled – though she may have needed her surgery, she was clearly able but unwilling to return to her job; the record clearly supported the board's order, which took into consideration all of the medical evidence, which did not establish that the employee's ailments were disabling. Public Emples. Ret. Sys. v. Stamps, 2005 Miss. LEXIS 37 (Miss. Jan. 20, 2005), op. withdrawn, sub. op., 898 So. 2d 664, 2005 Miss. LEXIS 255 (Miss. 2005).

While the appellate court determined that medical evidence suggested a 55-year-old state university employee at times did suffer from physical and mental difficulties (primarily depression that was aggravated by a transfer to a more demanding position), substantial evidence also suggested that there was no clear reason explaining a connection between her lower extremity pain and her depression, and no showing that these illnesses were permanent. Substantial evidence supported the agency ruling that the employee was ineligible for disability benefits. Purnell v. Public Emples. Ret. Sys., 894 So. 2d 597, 2004 Miss. App. LEXIS 877 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373, 2005 Miss. LEXIS 161 (Miss. 2005).

Public Employees' Retirement System's (PERS) decision denying a disabled employee's disability benefits was not supported by the evidence. PERS's decision was based on the fact that the employee, who had had a stroke, did not exhibit memory failure at the hearing; however, this was insubstantial to refute the medical diagnosis. Pub. Emples. Ret. Sys. v. Kellum, 878 So. 2d 1044, 2004 Miss. App. LEXIS 692 (Miss. Ct. App. 2004).

Public Employees' Retirement System (PERS) (Mississippi) erred in denying an employee disability benefits under Miss. Code Ann. § 25-11-113(1)(a) because (1) the employee presented substantial evidence that the employee's medical condition precluded the employee from performing the usual duties of employment, (2) the determination of PERS that the employee was not disabled was arbitrary and capricious, (3) the information contained within the medical records was objective, not subjective, evidence of disability, and (4) the finding by the PERS that one physician believed the employee could return to work was unsupported by the record, given that the physician did not state that the employee could have returned to the employee's job as a custodian. Pub. Emples. Ret. Sys. v. Finklea, 862 So. 2d 569, 2004 Miss. App. LEXIS 17 (Miss. Ct. App. 2004).

Where a teacher presented substantial medical evidence that she suffered from chronic fatigue syndrome and that the effects rendered her unable to perform her duties, the Public Employees' Retirement System (PERS) denial of disability benefits was arbitrary and capricious as not being supported by substantial evidence in the record where there was no evidence on the record to contradict the teacher's evidence, where PERS failed to conduct an independent medical examination of the teacher though it had the right to do so, and where it relied on its own evaluation and the opinions of its own reviewing physicians in reaching its decision. Cauthen v. Pub. Emples. Ret. Sys., 860 So. 2d 829, 2003 Miss. App. LEXIS 1134 (Miss. Ct. App. 2003).

Where the record was devoid of any evidence that the employee was not disabled, and the employee's treating physicians and employer certified that the employee's illnesses prohibited the employee from doing the employee's job, the Mississippi Public Employees' Retirement System, in denying the employee disability benefits, could not choose to ignore the only evidence in the record from the examining physician, especially where it chose not to exercise its right to an independent medical evaluation under Miss. Code Ann. § 25-11-113(1)(c) (now 25-11-113(1)(d)). Public Emples. Ret. Sys. v. Dearman, 846 So. 2d 1014, 2003 Miss. LEXIS 150 (Miss. 2003).

Where the uncontradicted evidence from the employee's treating physicians and employer established that the employee could no longer teach and that no amount of accommodation could remedy the situation, as was required for the employee to receive disability benefits pursuant to Miss. Code Ann. § 25-11-113(1)(a), the Mississippi Public Employees' Retirement System arbitrarily and capriciously denied the employee disability benefits. Public Emples. Ret. Sys. v. Dearman, 846 So. 2d 1014, 2003 Miss. LEXIS 150 (Miss. 2003).

Mississippi Public Employees' Retirement System's (PERS) decision denying the claimant disability benefits was arbitrary and capricious and had to be reversed because (1) the claimant's supervisor certified that the claimant was no longer able to function in the claimant's job as a result of the claimant's medical problems; (2) all of the claimant's duties would be affected as the claimant was an equipment mechanic, which position required that the claimant do stringent work; (3) three doctors stated that the claimant was permanently disabled; and (4) the PERS had no controverting evidence in the face of medical diagnoses made by credible doctors. Public Emples. Ret. Sys. v. Ross, 829 So. 2d 1238, 2002 Miss. LEXIS 319 (Miss. 2002).

As the overwhelming and undisputed evidence showed that the claimant was disabled from work due to diabetes, and the Public Employees' Retirement System's disability appeals committee made no findings in support of its denial of benefits, its decision was reversed as arbitrary and capricious and unsupported by substantial evidence. Public Emples. Ret. Sys. v. Thomas, 809 So. 2d 690, 2001 Miss. App. LEXIS 252 (Miss. Ct. App. 2001).

A denial of benefits was not based on substantial evidence where the claimant was denied benefits because her medical evidence was characterized as subjective, because she stopped working soon after receiving a threatening phone call at school, and because she was able to continue working for many years despite her medical problems. Public Emples. Retirement Sys. v. Marquez, 774 So. 2d 421, 2000 Miss. LEXIS 254 (Miss. 2000).

2. Social security.

Award of hurt-on-the-job disability benefits to the claimant was improper where there was substantial evidence to support the Public Employees' Retirement System's (PERS) finding that the claimant's disability was not the direct result of the November 1992 incident at the State hospital, Miss. Code Ann. § 25-11-114(6); further, a Social Security Administration determination of disability was not binding on PERS, Miss. Code Ann. § 25-11-113(1)(a). Public Emples. Ret. Sys. v. Smith, 2004 Miss. App. LEXIS 29 (Miss. Ct. App. Jan. 13, 2004).

A grant of social security benefits does not require the Public Employees' Retirement System to grant disability benefits; the statute only permits, rather than requires, the acceptance of a medical disability determination from the Social Security Administration in lieu of a certification from the medical board. Public Emples. Retirement Sys. v. Marquez, 774 So. 2d 421, 2000 Miss. LEXIS 254 (Miss. 2000).

3. Evaluation of condition.

Public employees' retirement system could have voided an employee's application for disability benefits based on the fact that the employee refused to submit to a medical examination by a doctor of the system's choice; however, the system chose to decide the case on its merits. Public Emples. Ret. Sys. v. Howard, 2003 Miss. LEXIS 761 (Miss. Dec. 4, 2003), op. withdrawn, sub. op., 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

Award of hurt-on-the-job disability benefits to the employee pursuant to Miss. Code Ann. § 25-11-114(6) was improper where there was not one accident or traumatic event that caused his disability; the employee had a significant history of multiple back injuries, accidents, and medical treatment, both prior and subsequent to the current incident. Pub. Emples. Ret. Sys. v. Smith, 880 So. 2d 348, 2004 Miss. App. LEXIS 309 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 965 (Miss. 2004).

Award of disability benefits to the employee was improper where much of the testimony concerning the severity of the employee's alleged medical problems and sudden onsets of debilitating bouts of dizziness consisted of the employee's own testimony and the lay testimony of friends and family and it was impossible to tie that lay testimony of remarkable severe attacks to any diagnosis or assessment by any of the numerous physicians who treated the employee during her history of allergy problems. Public Emples. Ret. Sys. v. Cobb, 839 So. 2d 605, 2003 Miss. App. LEXIS 150 (Miss. Ct. App. 2003).

Public employees' retirement system failed to follow the statutorily mandated procedure under Miss. Code Ann. § 25-11-113(3) when it ordered a retired employee on disability to be examined by a psychiatrist even though the employee was on disability for a physical disorder. Freeman v. Public Emples. Ret. Sys., 822 So. 2d 274, 2002 Miss. LEXIS 210 (Miss. 2002).

In case where claimant teacher's disability benefits based on chronic fatigue syndrome/dysthymic depression were revoked, although the burden was on the claimant to initially prove disability to the Mississippi Medical Review Board and the Mississippi Disability Appeals Committee, because the statutory language of Miss. Code Ann. § 25-11-113(3) (1999), was permissive, not mandatory, the Mississippi Public Employees Retirement System had to not only properly notify the disabled retiree when medical examinations were required, but also specify what information had to be included in the report of the examinations, regarding the burden of proving continuing disability. Freeman v. Public Emples. Ret. Sys. of ., 2002 Miss. LEXIS 42 (Miss. Feb. 21, 2002), op. withdrawn, sub. op., 822 So. 2d 274, 2002 Miss. LEXIS 210 (Miss. 2002).

4. Judicial review.

In this disability benefits case, there was objective medical evidence of the worker's impairment; the Board's decision denying her request for disability benefits was not supported by substantial evidence, given that her job duties included standing, walking, sitting, bending, there was testimony that she could not perform her job duties, plus a doctor also assigned her a rating of 23 percent whole person and 30 percent lumbar spine. Public Emples. Ret. Sys. v. James, 214 So. 3d 1067, 2016 Miss. App. LEXIS 701 (Miss. Ct. App. 2016).

PERS' decision to deny an elementary school teacher's request for regular disability benefits was unsupported by substantial evidence because multiple doctors opined that the teacher's lupus, fibromyalgia, and neck and back problems prevented her from performing the usual duties of employment, Miss. Code Ann. § 25-11-113(1)(a). Public Emples. Ret. Sys. v. Walker, 126 So. 3d 892, 2013 Miss. LEXIS 620 (Miss. 2013).

Administrative finding that an employee was not disabled was held to be proper because whether the employee was "disabled" was for the Board of Trustees of the Public Employees' Retirement System of Mississippi to determine and not for her employer. Furthermore, the statutory definition for "disability" was applied, as required by Miss. Code Ann. § 25-11-113(1)(a). Henley v. Public Emples. Ret. Sys., 26 So. 3d 1108, 2010 Miss. App. LEXIS 38 (Miss. Ct. App. 2010).

Disability Appeals Committee failed to point to any objective evidence in the record to indicate the nurse's fibromyalgia did not exist and did not contribute to her disabling condition. Wright v. Public Employees' Ret. Sys., 24 So. 3d 382, 2009 Miss. App. LEXIS 942 (Miss. Ct. App. 2009).

Court could not see how the Disability Appeals Committee (DAC) could base its 2003 denial on its conclusion that the nurse was treated optimally, and turn around in 2007 and claim the same report from the psychiatrist illustrated the nurse did not receive adequate treatment for her illness and needed to be optimized; the psychiatrist offered no new findings to the DAC in 2007 and it reviewed the same report as it had earlier in 2003. Furthermore, these inconsistent findings did not concern mere collateral matters, but instead, these contradictory conclusions formed the main bases the DAC relied upon in 2003 and on remand in 2007 to deny the nurse's claim; the DAC's puzzling contradictory analysis left the impression that its decision was indeed arbitrary and without support of substantial, objective evidence. Wright v. Public Employees' Ret. Sys., 24 So. 3d 382, 2009 Miss. App. LEXIS 942 (Miss. Ct. App. 2009).

Acting de novo is not the appellate court's role on review, and if the court upheld the decision that the employee was not disabled as a result of depression for disability retirement benefits purposes, the court would have been acting de novo. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

Primary issue before the court was not whether there was evidence to support the employee's disability, but whether there was substantial evidence to support the finding that she was not disabled for disability retirement benefit determination under Miss. Code Ann. § 25-11-113(1)(a). Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

While the court found that the Public Employees' Retirement System's decision to deny benefits under Miss. Code Ann. § 25-11-113(1)(a) regarding an employee's physical condition was supported by substantial evidence, the court was unable to do so with regard to her mental condition for purposes of Miss. Unif. Cir. & County Ct. Prac. R. 5.03. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301, 2008 Miss. App. LEXIS 52 (Miss. Ct. App. 2008).

There was no dispute that the former employee suffered from various ailments such as Chron's disease, sarcoidosis and sarcoiliitis, but most of her medical records primarily dealt with various check-ups with notations such as "unremarkable." The pertinent question the employee was required to address was whether her ailments rendered her disabled as defined by Miss. Code Ann. § 25-11-113; the Public Employees' Retirement System of Mississippi (PERS) presented sufficient evidence to support its finding that she was not disabled where the only proof submitted by the former employee that she could no longer perform the usual duties of her employment was her own testimony at the hearing, which centered on neck and back pain, in other words, ailments different from what she had asserted in her claim, and where she claimed that she had resigned from her job per doctor's order, but she failed to produce documentation thereon. Public Emples. Ret. Sys. v. Burt, 919 So. 2d 1150, 2005 Miss. App. LEXIS 975 (Miss. Ct. App. 2005).

First doctor diagnosed the claimant a former carpenter with a state university, with diffuse myofascial disease, chronic depression, and chronic fibromyalgia and stated that the claimant's disability was permanent and he would require an indefinite amount of treatment, and the second doctor determined that the claimant was permanently disabled due to fibromyalgia and depression; in light of the objective diagnoses made by the treating doctors, the Mississippi Public Employees' Retirement System's conclusion that the claimant was not disabled and not entitled to benefits was not substantiated by the record. Public Emples. Ret. Sys. v. Bishop, 942 So. 2d 259, 2006 Miss. App. LEXIS 826 (Miss. Ct. App. 2006).

Circuit court's overruling of the Mississippi Public Employees' Retirement System's denial of disability benefits to a teacher was reversed, as substantial evidence supported the agency's decision. However, the teacher was to submit to an evaluation by a physician of the agency's choice, as well as an updated exam by her physician if she so chose. Public Emples. Ret. Sys. v. Howard, 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

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Am. Jur.

19A Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 11 (petition or application to review disallowance of claim for pension seeking to recover disability benefits).

§ 25-11-114. Retirement allowance for death before retirement or death or disability in line of duty.

(1) The applicable benefits provided in subsections (2) and (3) of this section shall be paid to eligible beneficiaries of any member who became a member of the system before July 1, 2007, and has completed four (4) or more

years of membership service, or who became a member of the system on or after July 1, 2007, and has completed eight (8) or more years of membership service, and who dies before retirement and who has not filed a Pre-Retirement Optional Retirement Form as provided in Section 25-11-111.

(2)(a) The surviving spouse of a member who dies before retirement shall receive a monthly benefit computed in accordance with paragraph (d) of this subsection (2) as if the member had nominated his spouse as beneficiary if:

(i) The member completed the requisite minimum number of years of membership service to qualify for a retirement allowance at age sixty (60);

(ii) The spouse has been married to the member for not less than one (1) year preceding the death of the member;

(iii) The member has not exercised any other option.

(b) If, at the time of the member's death, there are no dependent children, and the surviving spouse, who otherwise would receive the annuity under this subsection (2), has filed with the system a signed written waiver of his or her rights to the annuity and that waiver was in effect at the time of the member's death, a lump-sum distribution of the deceased member's accumulated contributions shall be refunded in accordance with Section 25-11-117.

(c) The spouse annuity shall begin on the first day of the month following the date of the member's death, but in case of late filing, retroactive payments will be made for a period of not more than one (1) year.

(d) The spouse of a member who is eligible to receive a monthly benefit under paragraph (a) of this subsection (2) shall receive a benefit for life equal to the higher of the following:

(i) The greater of twenty percent (20%) of the deceased member's average compensation as defined in Section 25-11-103 at the time of death or Fifty Dollars ($50.00) monthly; or

(ii) Benefits calculated under Option 2 of Section 25-11-115. The method of calculating the retirement benefits shall be on the same basis as provided in Section 25-11-111(d) or (e), as applicable. However, if the member dies before being qualified for a full, unreduced retirement allowance, then the benefits shall be reduced by an actuarially determined percentage or factor based on the lesser of either the number of years of service credit or the number of years in age required to qualify for a full, unreduced retirement allowance in Section 25-11-111(d) or (e), as applicable.

(e) The surviving spouse of a deceased member who previously received spouse retirement benefits under paragraph (d)(i) of this subsection from and after July 1, 1992, and whose benefits were terminated before July 1, 2004, because of remarriage, may again receive the retirement benefits authorized under paragraph (d)(i) of this subsection by making application with the board to reinstate those benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but no earlier than July 1, 2004. From and after July 1, 2010, any spouse who chose Option 2 from and after July 1, 1992, but before July 1, 2004, where the benefit, although payable for life, was less than the benefit available under the calculation in paragraph (d)(i) of this subsection shall have his or her benefit increased to the amount which provides the greater benefit.

(3)(a) Subject to the maximum limitation provided in this paragraph, the member's dependent children each shall receive an annuity of the greater of ten percent (10%) of the member's average compensation as defined in Section 25-11-103 at the time of the death of the member or Fifty Dollars ($50.00) monthly; however, if there are more than three (3) dependent children, each dependent child shall receive an equal share of a total annuity equal to thirty percent (30%) of the member's average compensation, provided that the total annuity shall not be less than One Hundred Fifty Dollars ($150.00) per month for all children.

(b) A child shall be considered to be a dependent child until marriage, or the attainment of age nineteen (19), whichever comes first; however, this age limitation shall be extended beyond age nineteen (19), but in no event beyond the attainment of age twenty-three (23), as long as the child is a student regularly pursuing a full-time course of resident study or training in an accredited high school, trade school, technical or vocational institute, junior or community college, college, university or comparable recognized educational institution duly licensed by a state. A student child who is receiving a retirement allowance as of June 30, 2016, whose birthday falls during the school year (September 1 through June 30) is considered not to reach age twenty-three (23) until the July 1 following the actual twenty-third birthday. A full-time course of resident study or training means a day or evening noncorrespondence course that includes school attendance at the rate of at least thirty-six (36) weeks per academic year or other applicable period with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned. Any child who is physically or mentally incompetent, as adjudged by either a Mississippi court of competent jurisdiction or by the board, shall receive benefits for as long as the incompetency exists.

(c) If there are more than three (3) dependent children, upon a child's ceasing to be a dependent child, his annuity shall terminate and there shall be a redetermination of the amounts payable to any remaining dependent children.

(d) Annuities payable under this subsection (3) shall begin the first day of the month following the date of the member's death or in case of late filing, retroactive payments will be made for a period of not more than one (1) year. Those benefits may be paid to a surviving parent or the lawful custodian of a dependent child for the use and benefit of the child without the necessity of appointment as guardian.

(4)(a) Death benefits in the line of duty. Regardless of the number of years of the member's creditable service, the spouse and/or the dependent children of an active member who is killed or dies as a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the line of performance of duty shall qualify, on approval of the board, for a retirement allowance on the first of the month following the date of death, but in the case of late filing, retroactive payments will be made for a period of not more than one (1) year. The spouse shall receive a retirement allowance for life equal to one-half (½) of the average compensation as defined in Section 25-11-103. In addition to the retirement allowance for the spouse, or if there is no surviving spouse, the member's dependent child shall receive a retirement allowance in the amount of one-fourth (¼) of the member's average compensation as defined in Section 25-11-103; however, if there are two (2) or more dependent children, each dependent child shall receive an equal share of a total annuity equal to one-half (½) of the member's average compensation. If there are more than two (2) dependent children, upon a child's ceasing to be a dependent child, his annuity shall terminate and there shall be a redetermination of the amounts payable to any remaining dependent children. Those benefits shall cease to be paid for the support and maintenance of each child upon the child attaining the age of nineteen (19) years; however, the spouse shall continue to be eligible for the aforesaid retirement allowance. Those benefits may be paid to a surviving parent or lawful custodian of the children for the use and benefit of the children without the necessity of appointment as guardian. Any spouse who received spouse retirement benefits under this paragraph (a) from and after April 4, 1984, and whose benefits were terminated before July 1, 2004, because of remarriage, may again receive the retirement benefits authorized under this paragraph (a) by making application with the board to reinstate those benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but not earlier than July 1, 2004.

(b) A child shall be considered to be a dependent child until marriage, or the attainment of age nineteen (19), whichever comes first; however, this age limitation shall be extended beyond age nineteen (19), but in no event beyond the attainment of age twenty-three (23), as long as the child is a student regularly pursuing a full-time course of resident study or training in an accredited high school, trade school, technical or vocational institute, junior or community college, college, university or comparable recognized educational institution duly licensed by a state. A student child who is receiving a retirement allowance as of June 30, 2016, whose birthday falls during the school year (September 1 through June 30) is considered not to reach age twenty-three (23) until the July 1 following the actual twenty-third birthday. A full-time course of resident study or training means a day or evening noncorrespondence course that includes school attendance at the rate of at least thirty-six (36) weeks per academic year or other applicable period with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned. Any child who is physically or mentally incompetent, as adjudged by either a Mississippi court of competent jurisdiction or by the board, shall receive benefits for as long as the incompetency exists.

(5) If all the annuities provided for in this section payable on account of the death of a member terminate before there has been paid an aggregate amount equal to the member's accumulated contributions standing to the member's credit in the annuity savings account at the time of the member's death, the difference between the accumulated contributions and the aggregate amount of annuity payments shall be paid to the person that the member has nominated by written designation duly executed and filed with the board. If there is no designated beneficiary surviving at termination of benefits, the difference shall be payable under Section 25-11-117.1(1).

(6) Regardless of the number of years of creditable service, upon the application of a member or employer, any active member who becomes disabled as a direct result of a physical injury sustained from an accident or traumatic event caused by external violence or physical force occurring in the line of performance of duty, provided that the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and the incapacity is likely to be permanent, may be retired by the board of trustees on the first of the month following the date of filing the application but in no event shall the retirement allowance begin before the termination of state service. If a member who has been approved for a retirement allowance under this subsection does not terminate state service within ninety (90) days after the approval, the retirement allowance and the application for the allowance shall be void. The retirement allowance shall equal the allowance on disability retirement as provided in Section 25-11-113 but shall not be less than fifty percent (50%) of average compensation. Line of duty disability benefits under this section shall be administered in accordance with the provisions of Section 25-11-113(1)(b), (c), (d), (e) and (f), (3), (4), (5) and (6).

(7) For purposes of determining death or disability benefits under this section, the following shall apply:

(a) Death or permanent and total disability resulting from a cardiovascular, pulmonary or musculoskeletal condition that was not a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of duty shall be deemed a natural death or an ordinary disability.

(b) A mental disability based exclusively on employment duties occurring on an ongoing basis shall be deemed an ordinary disability.

(8) If the deceased or disabled member has less than four (4) years of membership service, the average compensation as defined in Section 25-11-103 shall be the average of all annual earned compensation in state service for the purposes of benefits provided in this section.

(9) In case of death or total and permanent disability under subsection (4) or subsection (6) of this section and before the board shall consider any

application for a retirement allowance, the employer must certify to the board that the member's death or disability was a direct result of an accident or a traumatic event occurring during and as a result of the performance of the regular and assigned duties of the employee and that the death or disability was not the result of the willful negligence of the employee.

(10) The application for the retirement allowance must be filed within one (1) year after death of an active member who is killed in the line of performance of duty or dies as a direct result of an accident occurring in the line of performance of duty or traumatic event; but the board of trustees may consider an application for disability filed after the one-year period if it can be factually demonstrated to the satisfaction of the board of trustees that the disability is due to the accident and that the filing was not accomplished within the one-year period due to a delayed manifestation of the disability or to circumstances beyond the control of the member. However, in case of late filing, retroactive payments will be made for a period of not more than one (1) year only.

(11)(a) Notwithstanding any other section of this article and in lieu of any payments to a designated beneficiary for a refund of contributions under Section 25-11-117, the spouse and/or children shall be eligible for the benefits payable under this section, and the spouse may elect, for both the spouse and/or children, to receive benefits in accordance with either subsections (2) and (3) or subsection (4) of this section; otherwise, the contributions to the credit of the deceased member shall be refunded in accordance with Section 25-11-117.

(b) Notwithstanding any other section of this article, a spouse who is entitled to receive a monthly benefit under either subsection (2) or (4) of this section and who is also the named beneficiary for a refund of accumulated contributions in the member's annuity savings account, may, after the death of the member, elect to receive a refund of accumulated contributions in lieu of a monthly allowance, provided that there are no dependent children entitled to benefits under subsection (3) of this section.

(12) If the member has previously received benefits from the system to which he was not entitled and has not repaid in full all amounts payable by him to the system, the annuity amounts otherwise provided by this section shall be withheld and used to effect repayment until the total of the withholdings repays in full all amounts payable by him to the system.

HISTORY:

Laws, 1984, ch. 311; Laws, 1991, ch. 513, § 6; Laws, 1992, ch. 576, § 5; Laws, 1993, ch. 617, § 6; Laws, 2000, ch. 628, § 13; Laws, 2004, ch. 561, § 6; Laws, 2007, ch. 407, § 6; Laws, 2010, ch. 389, § 3; Laws, 2010, ch. 528, § 2; Laws, 2011, ch. 469, § 4; Laws, 2016, ch. 397, § 11, eff from and after July 1, 2016.

Joint Legislative Committee Note —

Section 3 of ch. 389, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), amended this section. Section 2 of ch. 528, Laws of 2010, effective July 1, 2010 (approved April 14, 2010), also amended this section. The amendments to this section do not conform and do not meet the Joint Committee's criteria for integration. As set out above, this section reflects the language of Section 2 of ch. 528, Laws of 2010, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in statutory references in paragraph (e) of subsection (2) by substituting "paragraph (d)(i) of this subsection" for "paragraph (d)(i) of this section" both times it appears in the first sentence and "paragraph (d)(i) of this subsection" for "(d)(i) of this subsection" in the last sentence. The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Notes —

Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Causation.
3. Permanent disability.
4. Procedure.
5. Eligibility.
6. Judicial review.

1. Constitutionality.

There was no violation of due process where a physician examined the claimant and provided a diagnosis and recommendation, and then voted with his fellow members of the medical board in the initial administrative determination to deny the claimant's application for disability retirement benefits as such procedure was justifiable by weighing the importance of the claimant's interests against the risk of an erroneous decision and the costs of alternative procedures. Dean v. Public Emples. Retirement Sys., 797 So. 2d 830, 2000 Miss. LEXIS 258 (Miss. 2000).

Section 25-11-114(2)(a), which mandates that the pre-retirement death benefits of a Mississippi Public Employees' Retirement System member must go to the member's surviving spouse, regardless of whom the member has duly designated as his or her beneficiary, was unconstitutional as applied as it impaired a contractual right which the deceased employee acquired when he became a member of the public retirement system. Public Emples. Retirement Sys. v. Porter, 763 So. 2d 845, 2000 Miss. LEXIS 39 (Miss. 2000).

2. Causation.

Substantial evidence supported PERS' denial of duty-related disability benefits to an elementary school teacher under Miss. Code Ann. § 25-11-114(6), after she was hurt during a classroom demonstration, because the teacher's complaints of neck and back pain predated her workplace injury by more than 30 years. Public Emples. Ret. Sys. v. Walker, 126 So. 3d 892, 2013 Miss. LEXIS 620 (Miss. 2013).

Substantial evidence supported a decision of a Board of Trustees of the Public Employees' Retirement System because an employee had the burden of persuading the Disability Appeals Committee, and the employee failed to show that her problems associated with carpal tunnel syndrome were the result of an accident or trauma. Public Emples. Ret. Sys. v. Card, 994 So. 2d 239, 2008 Miss. App. LEXIS 341 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 648 (Miss. 2008).

Award of hurt-on-the-job disability benefits to the employee pursuant to Miss. Code Ann. § 25-11-114(6) was improper where there was not one accident or traumatic event that caused his disability; the employee had a significant history of multiple back injuries, accidents, and medical treatment, both prior and subsequent to the current incident. Pub. Emples. Ret. Sys. v. Smith, 880 So. 2d 348, 2004 Miss. App. LEXIS 309 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 965 (Miss. 2004).

Finding of Board of Trustees of Public Employees' Retirement System (PERS), that employee's disability was not result of work-related accident in which she was shoved against wall and fell against her shoulder, was supported by substantial evidence, including evidence that employee was diagnosed with carpal tunnel syndrome over one year prior to accident, and physician's testimony that she had no trauma other than contusion on shoulder after accident. Brinston v. Public Emples. Retirement Sys., 706 So. 2d 258, 1998 Miss. App. LEXIS 61 (Miss. Ct. App. 1998).

Board of Trustees of Public Employees' Retirement System (PERS) did not act arbitrarily and capriciously in declining to employ rationale of workers' compensation law in determining whether employee's work-related accident was direct cause of her disability so as to entitle her to PERS benefits; statutory requirements for workers' compensation and PERS benefits were separate and distinct. Brinston v. Public Emples. Retirement Sys., 706 So. 2d 258, 1998 Miss. App. LEXIS 61 (Miss. Ct. App. 1998).

Employee's carpal tunnel syndrome evolved over a period of time, rather than resulting from single work-related accident in which she was shoved against wall, and denial of benefits by Board of Trustees of Public Employees' Retirement System (PERS) thus did not violate statute providing that person who has been employee for less than four years is entitled to retirement allowance only upon becoming disabled as direct result of accident incurred in line of duty. Brinston v. Public Emples. Retirement Sys., 706 So. 2d 258, 1998 Miss. App. LEXIS 61 (Miss. Ct. App. 1998).

3. Permanent disability.

Circuit court erred by substituting its judgment in place of a public employees' retirement system's decision to deny a teacher line of duty disability benefits based on contradictory evidence as to whether or not the teacher was unable to perform the duties of the job; it was within the province of the system to decide which evidence was believable. Public Emples. Ret. Sys. v. Howard, 2003 Miss. LEXIS 761 (Miss. Dec. 4, 2003), op. withdrawn, sub. op., 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

Evidence was sufficient to support a finding that the claimant was not permanently disabled where one physician felt that the claimant's chances of returning to work were poor regardless of what treatment she received for her back condition, but, to the contrary, another physician felt that if the claimant had surgery, her chances for a full recovery were good and the latter physician, as well as the therapist who administered the claimant's functional capacity evaluation, were of the opinion that she was ready to return to work without further medical treatment. Byrd v. Public Emples. Retirement Sys., 774 So. 2d 434, 2000 Miss. LEXIS 255 (Miss. 2000).

4. Procedure.

There was no violation of the statute where a physician examined the claimant and provided a diagnosis and recommendation, and then voted with his fellow members of the medical board in the initial administrative determination to deny the claimant's application. Dean v. Public Emples. Retirement Sys., 797 So. 2d 830, 2000 Miss. LEXIS 258 (Miss. 2000).

5. Eligibility.

Disability appeals committee's finding that appellant was not eligible for duty-related disability benefits was supported by substantial evidence. Appellant failed to show that she was incapable of performing the usual duties of her employment. Roberts v. Public Emples. Ret. Sys. of Miss., 198 So. 3d 463, 2016 Miss. App. LEXIS 494 (Miss. Ct. App. 2016).

Decision of the Public Employees' Retirement System of Mississippi to deny an employee duty-related retirement benefits was based on substantial evidence and was not arbitrary of capricious because ample evidence supported its findings that the employee's condition was not disabling; the examining physicians, as well as an occupational therapist, did not believe that the employee's diagnosis was supported by medical findings. Public Emples. Ret. Sys. of Miss. v. Comardelle, 210 So. 3d 984, 2015 Miss. App. LEXIS 143 (Miss. Ct. App. 2015).

As experts disagreed as to whether appellee was disabled by fibromyalgia and other ailments, and as there was sufficient medical evidence contradicting her disability claims, substantial evidence supported the Mississippi Public Employees' Retirement System's denial of both regular and duty-related benefits under Miss. Code Ann. § 25-11-113 and 25-11-114. Public Emples. Ret. Sys. v. Walker, 126 So. 3d 904, 2012 Miss. App. LEXIS 808 (Miss. Ct. App. 2012), rev'd, in part, 126 So. 3d 892, 2013 Miss. LEXIS 620 (Miss. 2013).

Employee's application for hurt-on-the-job disability benefits, filed pursuant to Miss. Code Ann. §§ 25-11-113 and 25-11-114, was properly denied because the record contained sufficient evidence to support the administrative finding that the employee was not disabled. Not all of the medical evidence and testimony supported a finding of disability; the records contained overwhelming inconsistencies in testing and symptomatology. Henley v. Public Emples. Ret. Sys., 26 So. 3d 1108, 2010 Miss. App. LEXIS 38 (Miss. Ct. App. 2010).

Employee was properly denied disability retirement benefits under Miss. Code Ann. § 25-11-114(6) by the Public Employees' Retirement System of Mississippi because the evidence was sufficient to show that he was not disabled under Miss. Code Ann. § 25-11-113 based on the testimony of a treating physician. This was despite the fact that several other doctors testified otherwise. Pub. Emples. Ret. Sys. v. Dean, 983 So. 2d 335, 2008 Miss. App. LEXIS 89 (Miss. Ct. App. 2008).

In light of the physician's findings which were part of the record, the appellate court could not agree with the Disability Appeals Committee that the only record documenting an alleged accident was one by the physician reporting that the employee got injured by lifting a heavy patient, and the record contained an incident report completed by the employee; the neck and shoulder injuries which resulted from the 1995 car accident were duty-related in that a vehicle struck the employee's vehicle as the employee was traveling to a home visit pursuant to duties as a visiting home health nurse, and by providing the committee with the employee's medical records and the incident report, the employee satisfied the employee's burden of establishing that the employee was disabled as a result of an on-the-job injury. Public Employees' Ret. Sys. v. Trulove, 954 So. 2d 501, 2007 Miss. App. LEXIS 250 (Miss. Ct. App. 2007).

Award of hurt-on-the-job disability benefits to the claimant was improper where there was substantial evidence to support the Public Employees' Retirement System's (PERS) finding that the claimant's disability was not the direct result of the November 1992 incident at the State hospital, Miss. Code Ann. § 25-11-114(6); further, a Social Security Administration determination of disability was not binding on PERS, Miss. Code Ann. § 25-11-113(1)(a). Public Emples. Ret. Sys. v. Smith, 2004 Miss. App. LEXIS 29 (Miss. Ct. App. Jan. 13, 2004).

6. Judicial review.

Circuit court's overruling of the Mississippi Public Employees' Retirement System's denial of disability benefits to a teacher was reversed, as substantial evidence supported the agency's decision. However, the teacher was to submit to an evaluation by a physician of the agency's choice, as well as an updated exam by her physician if she so chose. Public Emples. Ret. Sys. v. Howard, 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

OPINIONS OF THE ATTORNEY GENERAL

Member of Public Employee's Retirement System must prove that mental incapacity is direct, as opposed to indirect, result of accident or traumatic event in order to qualify for line of duty disability benefits. 1994 Miss. Op. Att'y Gen. 1017.

§ 25-11-115. Options.

(1) Upon application for superannuation or disability retirement, any member may elect to receive his or her benefit in a retirement allowance payable throughout life with no further payments to anyone at the member's death, except that if the member's total retirement payments under this article do not equal the member's total contributions under this article, the named beneficiary shall receive the difference in cash at the member's death. Or the member may elect upon retirement, or upon becoming eligible for retirement, to receive the actuarial equivalent subject to the provisions of subsection (3) of this section of his or her retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option 1. If the retired member dies before he or she has received in annuity payment the value of the member's annuity savings account as it was at the time of the member's retirement, the balance shall be paid to the legal representative or to such person as the member has nominated by written designation duly acknowledged and filed with the board;

Option 2. Upon the retired member's death, his or her reduced retirement allowance shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement;

Option 3. Upon the retired member's death, one-half (½) of his or her reduced retirement allowance shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement, and the other one-half (½) of his or her reduced retirement allowance to some other designated beneficiary;

Option 4. Upon the retired member's death, three-fourths (¾) of his or her reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement;

Option 4-A. Upon the retired member's death, one-half (½) of his or her reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person as the member has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his or her retirement;

Option 4-B. A reduced retirement allowance shall be continued throughout the life of the retirant, but with the further guarantee of payments to the named beneficiary or beneficiaries for a specified number of years certain. If the retired member or the last designated beneficiary both die before receiving all guaranteed payments due, the actuarial equivalent of the remaining payments shall be paid to the successors of the retired member under Section 25-11-117.1(1);

Option 6. Any member who became a member of the system before July 1, 2007, and who has at least twenty-eight (28) years of creditable service at the time of retirement or who is at least sixty-three (63) years of age and eligible to retire, may select the maximum retirement benefit or an optional benefit as provided in this subsection together with a partial lump-sum distribution. Any member who became a member of the system on or after July 1, 2007, but before July 1, 2011, and who has at least twenty-eight (28) years of creditable service at the time of retirement may select the maximum retirement benefit or any optional benefit as provided in this subsection together with a partial lump-sum distribution. Any member who became a member of the system on or after July 1, 2011, and who has at least thirty-three (33) years of creditable service at the time of retirement may select the maximum retirement benefit or any optional benefit as provided in this subsection together with a partial lump-sum distribution. The amount of the lump-sum distribution under this option shall be equal to the maximum monthly benefit multiplied by twelve (12), twenty-four (24) or thirty-six (36) as selected by the member. The maximum retirement benefit shall be actuarially reduced to reflect the amount of the lump-sum distribution selected and further reduced for any other optional benefit selected. The annuity and lump-sum distribution shall be computed to result in no actuarial loss to the system. The lump-sum distribution shall be made as a single payment payable at the time the first monthly annuity payment is paid to the retiree. The amount of the lump-sum distribution shall be deducted from the member's annuity savings account in computing what contributions remain at the death of the retiree and/or a beneficiary. The lump-sum distribution option may be elected only once by a member upon initial retirement, and may not be elected by a retiree, by members applying for a disability retirement annuity, or by survivors.

(2) No change in the option selected shall be permitted after the member's death or after the member has received his or her first retirement check except as provided in subsections (3) and (4) of this section and in Section 25-11-127. Members who are pursuing a disability retirement allowance and simultaneously or later elect to begin to receive a service retirement allowance while continuing to pursue a disability retirement allowance, shall not be eligible to select Option 6 and that option may not be selected at a later time if the application for a disability retirement allowance is voided or denied. However, any retired member who is receiving a retirement allowance under Option 2 or Option 4-A upon July 1, 1992, and whose designated beneficiary predeceased him or her or whose marriage to a spouse who is his or her designated beneficiary is terminated by divorce or other dissolution, upon written notification to the retirement system of the death of the designated beneficiary or of the termination of the retired member's marriage to the designated beneficiary, the retirement allowance payable to the member after receipt of that notification by the retirement system shall be equal to the retirement allowance that would have been payable if the member had not elected the option. In addition, any retired member who is receiving the maximum retirement allowance for life, a retirement allowance under Option 1 or who is receiving a retirement allowance under Option 2 or Option 4-A on July 1, 1992, may elect to provide survivor benefits under Option 2 or Option 4-A to a spouse who was not previously the member's beneficiary and whom the member married before July 1, 1992.

(3) Any retired member who is receiving a reduced retirement allowance under Option 2, Option 4 or Option 4-A whose designated beneficiary predeceases him or her, or whose marriage to a spouse who is his or her designated beneficiary is terminated by divorce or other dissolution, may elect to cancel the reduced retirement allowance and receive the maximum retirement allowance for life in an amount equal to the amount that would have been payable if the member had not elected Option 2, Option 4 or Option 4-A. That election must be made in writing to the office of the executive director of the system on a form prescribed by the board. Any such election shall be effective the first of the month following the date the election is received by the system; however, the election may be applied retroactively for not more than three (3) months but no earlier than the first of the month following the date of the death of the beneficiary.

(4) Any retired member who is receiving the maximum retirement allowance for life, or a retirement allowance under Option 1, and who marries after his or her retirement may elect to cancel the maximum retirement allowance and receive a reduced retirement allowance under Option 2, Option 4 or Option 4-A to provide continuing lifetime benefits to his or her spouse. That election must be made in writing to the office of the executive director of the system on a form prescribed by the board not earlier than the date of the marriage and not later than one (1) year from the date of the marriage. Any such election shall be effective the first of the month following the date the election is received by the system.

(5)(a) Except as otherwise provided in this subsection, if the election of an optional benefit is made after the member has attained the age of sixty-five (65) years, the actuarial equivalent factor shall be used to compute the reduced retirement allowance as if the election had been made on his or her sixty-fifth birthday; however, from and after January 1, 2003, if there is an election of Option 6 after the member has attained the age of sixty-five (65) years, the actuarial equivalent factor based on the retiree's age at the time of retirement shall be used to compute the reduced maximum monthly retirement allowance. However, if a retiree marries or remarries after retirement and elects either Option 2 or Option 4-A as provided in subsection (2) or (4) of this section, the actuarial equivalent factor used to compute the reduced retirement allowance shall be the factor for the age of the retiree and his or her beneficiary at the time such election for recalculation of benefits is made.

(b) For members who retire on or after July 1, 2012, the actuarial equivalent factor used to compute the reduced retirement allowance at retirement or upon any subsequent recalculation of the benefit shall be the factor for the age of the retiree and his or her beneficiary at the time of retirement or at the time an election for recalculation of benefits is made.

(6) Notwithstanding any provision of Section 25-11-1 et seq., no payments may be made for a retirement allowance on a monthly basis for a period of time in excess of that allowed by federal law.

(7) If a retirant and his or her eligible beneficiary, if any, both die before they have received in annuity payments a total amount equal to the accumulated contributions standing to the retirant's credit in the annuity savings account at the time of his or her retirement, the difference between the accumulated contributions and the total amount of annuities received by them shall be paid to such persons as the retirant has nominated by written designation duly executed and filed in the office of the executive director. If no designated person survives the retirant and his or her beneficiary, the difference, if any, shall be paid under Section 25-11-117.1(1).

(8) Any retired member who retired on Option 2(5) or 4-A(5) before July 1, 1992, who is still receiving a retirement allowance on July 1, 1994, shall receive an increase in the annual retirement allowance effective July 1, 1994, equal to the amount they would have received under Option 2 or Option 4-A without a reduction for Option 5 based on the ages at retirement of the retiree and beneficiary and option factors in effect on July 1, 1992. That increase shall be prospective only.

HISTORY:

Codes, 1942, § 7446-17; Laws, 1952, ch. 299, § 17; Laws, 1962, ch. 579, § 1; Laws, 1971, ch. 478, § 4; Laws, 1977, ch. 450, § 4; Laws, 1984, ch. 496, § 2; Laws, 1986, ch. 472; Laws, 1992, ch. 576, § 6; Laws, 1993, ch. 617, § 7; Laws, 1994, ch. 601, § 5; Laws, 1999, ch. 544, § 2; Laws, 2000, ch. 628, § 14; Laws, 2002, ch. 627, § 10; Laws, 2007, ch. 407, § 7; Laws, 2008, ch. 359, § 3; Laws, 2010, ch. 389, § 4; Laws, 2010, ch. 528, § 3; Laws, 2010, ch. 1, 1st Ex Sess § 3; Laws, 2011, ch. 369, § 1; Laws, 2016, ch. 397, § 13; Laws, 2017, ch. 338, § 4, eff from and after July 1, 2017.

Joint Legislative Committee Note —

Section 4 of ch. 389, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), amended this section. Section 3 of ch. 528, Laws of 2010, effective July 1, 2010 (approved

April 14, 2010) and Section 3 of ch. 1, Laws of 2010, 1st Ex Sess., effective January 1, 2011 (approved May 21, 2010), also amended this section. As set out above, this section reflects the language of all three amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation the authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Legislative Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor's Notes —

Laws of 2010, 1st Extraordinary Session, ch. 1, § 4, provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 2010; however, Section 3 of this act shall take effect and be in force from and after January 1, 2011."

Amendment Notes —

The 2017 amendment inserted "to the successors of the retired member" near the end of Option 4-B.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Written filing of beneficiary designation, see § 25-11-103.

Superannuation retirement, see § 25-11-111.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Application of this article to the limitation on the amount of retirement allowance from the supplemental legislative retirement plan, see § 25-11-309.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Federal Aspects—

Title II of the Federal Social Security Act, see 42 USCS §§ 401 et seq.

JUDICIAL DECISIONS

1. In general.

While it was error for the Public Employees' Retirement System (PERS) and the lower courts to use the current statutes to determine who received a retiree's benefits after her death and the death of her named beneficiary, where all involved should have looked to the former statute as part and parcel of the contract between the retiree and PERS, the error was harmless where the end result was substantially similar to that for which the retiree contracted. Vaughn v. Public Emples. Ret. Sys. of Miss., 182 So. 3d 433, 2015 Miss. LEXIS 559 (Miss. 2015).

An employee's surviving spouse was properly not allowed a posthumous modification of the spousal death benefit option where the evidence showed that the employee and his spouse, when applying for disability retirement benefits, made a choice for the maximum monthly benefit option available, which decision precluded the spousal death benefit. Davis v. Public Emples. Retirement Sys., 750 So. 2d 1225, 1999 Miss. LEXIS 340 (Miss. 1999).

OPINIONS OF THE ATTORNEY GENERAL

While member of retirement system who retired prior to July 1, 1987 may himself be entitled to minimum benefit under law based on current selection of option, where subsequent election is made available to him on actuarial equivalent basis, such subsequent election would be subject to actuarial adjustment and would thereby reduce minimum benefits that might otherwise be payable under Section 25-11-115. 1993 Miss. Op. Att'y Gen. 400.

§ 25-11-115.1. Designation of new spouse as beneficiary under Option 4-A; benefits payable to spouse.

Any retired member who died in 1993, who retired under Option 4-A before January 1, 1980, with his spouse as his designated beneficiary, whose spouse predeceased him, and who remarried before July 1, 1992, shall be deemed to have designated his new spouse as his beneficiary under Option 4-A before his death. Monthly survivor benefits to the member's surviving spouse will be payable beginning on the first of the month after April 5, 1996. In addition, retroactive benefits will be payable to the surviving spouse back to the date of death of the retired member.

HISTORY:

Laws, 1996, ch. 472, § 6, eff from and after passage (approved April 5, 1996).

Cross References —

Benefits options generally, see § 25-11-115.

§ 25-11-115.2. Benefit payments not knowingly to be paid directly to legally incompetent persons; representative payees.

(1) It is the intent of the Public Employees' Retirement System to provide benefit payments in an efficient manner consistent with the member's best interest. The system shall not knowingly allow payments to be made directly to persons who are determined legally incompetent or incapable of managing or directing the management of benefits. Any person applying for or receiving benefits who comes to be known as incapable of applying for, managing or directing the management of benefits by reason of mental or physical impairment, as certified by a medical doctor, shall be directed to obtain a conservator or legal guardian for purposes of applying for, receiving, managing and/or directing benefit payments. In the absence of a conservator or legal guardian or valid durable power of attorney, the Public Employees' Retirement System may designate a representative payee for such purposes. The benefit recipient may nominate a representative payee for consideration by the system in selecting a payee, and the system is responsible for selecting a payee, including an agency, organization, or institution, that will serve the interest of the benefit recipient. The system may also accept the Social Security Administration's designation of a representative payee to manage and direct funds paid by the system. The system shall have the authority to establish rules for the administration of this section.

(2) A representative payee shall be directed to apply benefits paid from the system only for the use and benefit of the benefit recipient. The system's obligations to a benefit recipient shall be discharged when it makes a correct payment to a representative payee on the benefit recipient's behalf. The system is without liability for the theft or misuse of benefits if the benefits were properly paid based upon the information available to the system at the time the payments were made.

(3) In the absence of a conservator, legal guardian or valid durable power of attorney, an unmarried benefit applicant who is deemed to be incapable of applying for, managing or directing his or her benefits, shall be entitled to receive annuity payments in an amount equal to a retirement allowance based on the maximum benefit payable to the member for life and with any remaining benefit at the death of the member payable pursuant to Section 25-11-117.1(1). Such payments shall be paid to the representative payee, designated by the system in accordance with the provisions of this section during the period of the benefit recipient's incapacity.

(4) In the absence of a conservator, legal guardian or valid durable power

of attorney, any married benefit applicant who is deemed to be incapable of applying for, managing or directing his or her benefits, shall be paid a reduced retirement allowance under Option 2 as provided in Section 25-11-115, with the lawful spouse as the beneficiary. Such payments shall be paid to a representative payee as designated by the system in accordance with the provisions of this section during the period of the benefit recipient's incapacity.

HISTORY:

Laws, 2000, ch. 628, § 1, eff from and after July 1, 2000.

§ 25-11-116. Repealed.

Repealed by Laws of 2008, ch. 359, § 12, effective July 1, 2008.

§ 25-11-116. [Laws, 1986, ch. 500, § 3, eff from and after passage (approved April 18, 1986).]

Editor's Notes —

Former § 25-11-116 provided for a credit of one (1) additional year of service in the calculations of the annual retirement allowance for certain members of the system who withdrew from service during a specified time period.

§ 25-11-117. Refund of contributions; distribution to retirement plan or account; repayment of refund.

(1) A member may be paid a refund of the amount of accumulated contributions to the credit of the member in the annuity savings account, provided that the member has withdrawn from state service and has not returned to state service on the date the refund of the accumulated contributions would be paid. That refund of the contributions to the credit of the member in the annuity savings account shall be paid within ninety (90) days from receipt in the office of the retirement system of the properly completed form requesting the payment. In the event of death before retirement of any member whose spouse and/or children are not entitled to a retirement allowance, the accumulated contributions to the credit of the deceased member in the annuity savings account shall be paid to the designated beneficiary on file in writing in the office of the executive director of the board of trustees within ninety (90) days from receipt of a properly completed form requesting the payment. If there is no such designated beneficiary on file for the deceased member in the office of the system, upon the filing of a proper request with the board, the contributions to the credit of the deceased member in the annuity savings account shall be refunded under Section 25-11-117.1(1). The payment of the refund shall discharge all obligations of the retirement system to the member on account of any creditable service rendered by the member before the receipt of the refund. By the acceptance of the refund, the member shall waive and relinquish all accrued rights in the system.

(2) Under the Unemployment Compensation Amendments of 1992 (Public Law 102-318 (UCA)), a member or the spouse of a member who is an eligible beneficiary entitled to a refund under this section may elect, on a form prescribed by the board under rules and regulations established by the board,

to have an eligible rollover distribution of accumulated contributions payable under this section paid directly to an eligible retirement plan, as defined under applicable federal law, or an individual retirement account. If the member or the spouse of a member who is an eligible beneficiary makes that election and specifies the eligible retirement plan or individual retirement account to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. A nonspouse beneficiary may elect to have an eligible rollover distribution paid in the form of a direct trustee-to-trustee transfer to an individual retirement account established to receive the distribution on behalf of the nonspouse beneficiary. Flexible rollovers under this subsection shall not be considered assignments under Section 25-11-129.

(3)(a) If any person who has received a refund, reenters the state service and again becomes a member of the system before July 1, 2007, the member may repay all or part of the amounts previously received as a refund, together with regular interest covering the period from the date of refund to the date of repayment; however, the amounts that are repaid by the member and the creditable service related thereto shall not be used in any benefit calculation or determination until the member has remained a contributor to the system for a period of at least four (4) years after the member's reentry into state service. Repayment for that time shall be made beginning with the most recent service for which refund has been made. Upon the repayment of all or part of that refund and interest, the member shall again receive credit for the period of creditable service for which full repayment has been made to the system.

(b) If any person who has received a refund, reenters the state service and again becomes a member of the system on or after July 1, 2007, the member may repay all or part of the amounts previously received as a refund, together with regular interest covering the period from the date of refund to the date of repayment; however, the amounts that are repaid by the member and the creditable service related thereto shall not be used in any benefit calculation or determination until the member has remained a contributor to the system for a period of at least eight (8) years after the member's reentry into state service. Repayment for that time shall be made beginning with the most recent service for which refund has been made. Upon the repayment of all or part of that refund and interest, the member shall again receive credit for the period of creditable service for which full repayment has been made to the system.

(4)(a) In order to provide a source of income to members who have applied for disability benefits under Section 25-11-113 or 25-11-114, the board may provide, at the employee's election, a temporary benefit to be paid from the member's accumulated contributions, if any, without forfeiting the right to pursue disability benefits, provided that the member has exhausted all personal and medical leave and has terminated his or her employment. The board may prescribe rules and regulations for carrying out the provisions of this subsection (4).

(b) If a member who has elected to receive temporary benefits under this subsection later applies for a refund of his or her accumulated contributions, all amounts paid under this subsection shall be deducted from the accumulated contributions and the balance will be paid to the member. If a member who has elected to receive temporary benefits under this subsection is later approved for a disability retirement allowance, and a service retirement allowance or survivor benefits are paid on the account, the board shall adjust the benefits in such a manner that no more than the actuarial equivalent of the benefits to which the member or beneficiary was or is entitled shall be paid.

(c) The board may study, develop and propose a disability benefit structure, including short- and long-term disability benefits, provided that it is the actuarial equivalent of the benefits currently provided in Section 25-11-113 or 25-11-114.

HISTORY:

Codes, 1942, § 7446-18; Laws, 1952, ch. 299, § 18; Laws, 1977, ch. 450, § 5; Laws, 1984, ch. 496, § 3; Laws, 1991, ch. 513, § 7; Laws, 1993, ch. 617, § 8; Laws, 1995, ch. 624, § 4; Laws, 1999, ch. 544, § 3; Laws, 2000, ch. 628, § 15; Laws, 2001, ch. 438, § 2; Laws, 2002, ch. 313, § 1; Laws, 2004, ch. 445, § 1; Laws, 2007, ch. 407, § 8; Laws, 2008, ch. 359, § 5; Laws, 2016, ch. 397, § 14; Laws, 2017, ch. 338, § 6, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment, in (3)(a), deleted "became a member of the system before July 1, 2007" following "If any person who" and inserted "before July 1, 2007" in the first sentence, and deleted "in increments of not less than one-quarter (¼) year of creditable service" following "shall be made" in the second sentence; in (3)(b), deleted "became a member of the system on or after July 1, 2007" following "If any person who" and inserted "on or after July 1, 2007" in the first sentence, and deleted "in increments of not less than one (1) month of creditable service" following "shall be made" in the second sentence.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Written filing of beneficiary designation, see § 25-11-103.

Membership of retirement system, see § 25-11-105.

Creditable service for purposes of retirement system, see § 25-11-109.

Retirement allowance for death or disability in line of duty, see § 25-11-114.

Payment to estate as intestate property of actuarial equivalent of remaining payments on reduced retirement allowance annuity, see § 25-11-115.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

JUDICIAL DECISIONS

1. In general.

State employee wrongfully terminated from employment was not entitled to be compensated for loss of retirement benefits she would have received had she remained member of state retirement system, where employee withdrew all retirement funds which had been contributed to her account and did not seek reinstatement. Brantley v. Surles, 804 F.2d 321, 1986 U.S. App. LEXIS 33673 (5th Cir. Miss. 1986).

§ 25-11-117.1. Persons to whom benefits payable in event of death of designated beneficiary.

(1) Except as otherwise provided in subsection (2) of this section, where benefits are payable to a designated beneficiary or beneficiaries under this article and the designated beneficiary or beneficiaries as provided by the

member on the most recent form filed with the system is deceased or otherwise disqualified at the time such benefits become payable, the following persons, in descending order of precedence, shall be eligible to receive such benefits:

(a) The surviving spouse of the member or retiree;

(b) The children of the member or retiree or their descendants, per stirpes;

(c) The brothers and sisters of the member or retiree or their descendants, per stirpes;

(d) The parents of the member or retiree;

(e) The executor or administrator on behalf of the member or retiree's estate;

(f) The persons entitled by law to distribution of the member or retiree's estate.

(2) Any monthly benefits payable to a beneficiary who dies prior to cashing his or her final check(s) and/or any additional benefits payable pursuant to Section 25-11-112 still payable at the death of a beneficiary receiving monthly benefits shall be paid as follows:

(a) The surviving spouse of the beneficiary;

(b) The children of the beneficiary or their descendants, per stirpes;

(c) The brothers and sisters of the beneficiary or their descendants, per stirpes;

(d) The parents of the beneficiary;

(e) The executor or administrator on behalf of the beneficiary's estate;

(f) The persons entitled by law to distribution of the beneficiary's estate.

(3) In the event no claim is made by any individual listed in subsection (2) of this section, a distribution may be made pursuant to the provisions of subsection (1) of this section.

(4) Payment under the provisions of this section shall bar recovery by any other person of the benefits distributed. Payment of benefits made to one or more members of a class of individuals are made on behalf of all members of the class. Any members of the class coming forward after payment is made must look to those who received the payment.

HISTORY:

Laws, 2000, ch. 628, § 2, eff from and after July 1, 2000.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Payments upon death.

1. In general.

While it was error for the Public Employees' Retirement System (PERS) and the lower courts to use the current statutes determine who received a retiree's benefits after her death and the death of her named beneficiary, where all involved should have looked to the former statute as part and parcel of the contract between the retiree and PERS, the error was harmless where the end result was substantially similar to that for which the retiree contracted. Vaughn v. Public Emples. Ret. Sys. of Miss., 182 So. 3d 433, 2015 Miss. LEXIS 559 (Miss. 2015).

2. Payments upon death.

Retiree's family gets the actuarial equivalent of the remaining guaranteed payments when both the retiree and her designated beneficiary (or beneficiaries) are dead; the limited exception is that any monthly check already written but not cashed by the deceased beneficiary (plus any cost-of-living adjustment for payments already made) shall be paid to that beneficiary's surviving family members. Therefore, in a case where both a retiree and her beneficiary were deceased, the retiree's family, rather than the beneficiary's family, received the rest of the guaranteed payments. Vaughn v. Public Emples. Ret. Sys. of Miss., 182 So. 3d 446, 2015 Miss. App. LEXIS 62 (Miss. Ct. App.), aff'd, 182 So. 3d 433, 2015 Miss. LEXIS 559 (Miss. 2015).

§ 25-11-118. Retirement system authorized to accept eligible roll over distributions to repay fund or for purchase of optional service credit.

Effective July 1, 2000, and subject to the rules adopted by the board of trustees, the system shall accept an eligible rollover distribution or a direct transfer of funds from another eligible retirement plan, as defined under applicable federal law, or an individual retirement account, in payment of all or a portion of the cost to purchase optional service credit or to reinstate previously withdrawn service credit as permitted by the system. The system may only accept rollover payments in an amount equal to or less than the balance due for purchase or reinstatement of service credit. The rules adopted by the board of trustees shall condition the acceptance of a rollover or transfer from another eligible retirement plan or an individual retirement account on the receipt of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

HISTORY:
Laws, 1999, ch. 544, § 4; Laws, 2002, ch. 313, § 2, eff from and after passage (approved Mar. 14, 2002.).

§ 25-11-119. Administration of Article 3.

(1) The board shall keep such data as shall be necessary for actuarial valuation of the assets and liabilities of the system and for checking its operating experience.

(2) The board shall keep minutes which shall be open to public inspection. It shall have the accounts of the system audited annually by the State Audit Department and shall publish as of the end of each fiscal year a report showing the fiscal transactions of the system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, a statement of income and expenditures, a statement of investments acquired and disposed of, and a balance sheet showing the financial condition of the system by means of an actuarial valuation of its assets and liabilities. It shall also publish a synopsis of the report.

(3) The board shall establish a general office for the meeting of the board and for the administrative personnel; provide for the installation of an adequate system of books, accounts, and records which will give effect to all requirements of Articles 1 and 3; and credit all assets received by the funds according to the purposes for which they are held. All books, accounts and records shall be kept in the general office of the board and shall be public

records except for individual member records. The system shall not disclose the name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains, except as authorized by regulations of the board.

(4) The board shall hold regular meetings at least quarterly in each year and such special meetings as may be deemed necessary. All meetings shall be open to the public.

(5) The board shall have power to make contracts, and to sue and be sued, under the name of the Board of Trustees of the Public Employees' Retirement System of Mississippi.

(6) Legal advisor. The Attorney General shall be the legal advisor of the board; and the board may employ counsel when needed.

(7) Medical board. The board may designate a medical board to be composed of three (3) physicians or may contract with another governmental agency or nongovernmental disability determination service that is qualified to make disability determinations. If required, other physicians may be engaged to report on special cases. The medical board or other governmental or nongovernmental disability determination service agency so designated shall arrange for, and pass upon, all medical examinations required under the provisions of this article; shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement; and shall report in writing to the board of trustees its conclusions and recommendations upon all the matters referred to it.

(8) Duties of actuary. The board of trustees shall designate an actuary who shall be the technical advisor of the board on matters regarding the operation of the system, and shall perform such other duties as are required in connection therewith.

(9) At least once in each two-year period, the actuary shall make an actuarial survey of the mortality, service, withdrawal and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the system. Taking into account the result of such investigation and valuation, the board of trustees shall adopt for the retirement system such mortality, service, and other tables as shall be deemed necessary. On the basis of such tables as the board of trustees shall adopt, the actuary shall make valuations of the assets and liabilities of the funds of the system.

HISTORY:

Codes, 1942, § 7446-19; Laws, 1952, ch. 299, § 19; Laws, 1985, ch. 325, § 2; Laws, 1991, ch. 513, § 8; Laws, 1995, ch. 624, § 5; Laws, 2008, ch. 359, § 9, eff from and after July 1, 2008.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Provision that, for purposes of Articles 1 and 3 of this chapter, "medical board" shall mean the board of physicians provided for in this section, see § 25-11-103.

Duties of the board with respect to group life and health benefits for retired persons, see § 25-11-141.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Application of this article to the limitation on the amount of retirement allowance from the supplemental legislative retirement plan, see § 25-11-309.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Disability retirement under highway patrol retirement system, see § 25-13-9.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. In general.

1. Constitutionality.

There was no violation of due process where a physician examined the claimant and provided a diagnosis and recommendation, and then voted with his fellow members of the medical board in the initial administrative determination to deny the claimant's application for disability retirement benefits as such procedure was justifiable by weighing the importance of the claimant's interests against the risk of an erroneous decision and the costs of alternative procedures. Dean v. Public Emples. Retirement Sys., 797 So. 2d 830, 2000 Miss. LEXIS 258 (Miss. 2000).

2. In general.

There was no violation of the statute where a physician examined the claimant and provided a diagnosis and recommendation, and then voted with his fellow members of the medical board in the initial administrative determination to deny the claimant's application. Dean v. Public Emples. Retirement Sys., 797 So. 2d 830, 2000 Miss. LEXIS 258 (Miss. 2000).

Under Miss. Code Ann. § 25-11-119(7), there is no defect in the procedure whereby doctors in the Mississippi Public Employees' Retirement System Medical Board examine claimants, make a diagnosis and recommendation, and then vote as members of the Medical Board on the disability claims. Flowers v. Public Emples. Ret. Sys., 952 So. 2d 972, 2006 Miss. App. LEXIS 778 (Miss. Ct. App. 2006).

OPINIONS OF THE ATTORNEY GENERAL

Public Employees' Retirement System may not release names, addresses or contents of any individual member records without prior written consent of individual to whom record pertains. 1992 Miss. Op. Att'y Gen. 688.

§ 25-11-119.1. On-site compliance audits of employers by Public Employees' Retirement System; penalties.

(1)(a) The system may perform on-site compliance audits of employers to determine compliance with reporting, contributions, and certification requirements under this title.

(b) The system may request records to be provided by the employer at the time of the audit.

(c) Audits shall be conducted at the sole discretion of the system after reasonable notice to the employer of at least five (5) working days.

(d) The employer shall extract and provide records as requested by the office in an appropriate, organized and usable format.

(e) Failure of an employer to allow access, provide records or comply in any way with an audit by the system under this section shall result in the employer being liable to the system for:

(i) Any liabilities and expenses, including administrative expenses and travel expenses, resulting from the employer's failure to comply with the audit; and

(ii) A penalty equal to one percent (1%) of the employer's contribution for the month preceding the notification of the audit.

(2) If the audit reveals an employer's failure to make contributions as required under Section 25-11-124, a failure to correctly report eligibility as required under Section 25-11-103(s), or a failure to maintain records as required under the rules and regulations of the system, the employer shall reimburse the system for the cost of the audit.

(3) The executive director may waive all or any part of the penalties and expenses if the executive director finds there were extenuating circumstances surrounding the employer's failure to comply with this section.

HISTORY:

Laws, 2016, ch. 397, § 2, eff from and after July 1, 2016.

§ 25-11-120. Hearings and appeals for persons aggrieved by administrative determination relating to eligibility, payment of benefits or calculation of creditable service.

(1) Any individual aggrieved by an administrative determination, including a determination of the medical board, relating to the eligibility for or payment of benefits, or the calculation of creditable service or other similar matters relating to the Public Employees' Retirement System or any other retirement system or program administered by the board, may request a hearing before a hearing officer designated by the board. Such hearings shall be conducted in accordance with rules and regulations adopted by the board and formal rules of evidence shall not apply. The hearing officer is authorized to administer oaths, hear testimony of witnesses and receive documentary and other evidence. In case of disability appeals, the hearing officer shall have the authority to defer a decision in order to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant. After the hearing and the receipt of any additional medical evidence requested by the hearing officer, the hearing officer shall certify the record to the board, which shall include the hearing officer's proposed statement of facts, conclusions of law and recommendation. The record may include a taped recording of the proceedings of the hearing in lieu of a transcribed copy of the proceedings. The board shall receive the record and make its determination based solely on matters contained therein.

(2) Any individual aggrieved by the determination of the board may appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the Uniform Circuit Court Rules governing appeals to the circuit court in civil cases. Such appeal shall be made solely on the record before the board and this procedure shall be the exclusive method of appealing determinations of the board.

(3) The board is authorized to appoint a committee of the board to serve as hearing officer or to employ or contract with qualified personnel to perform the duties of hearing officer and court reporter as may be necessary for conducting, recording and transcribing such hearings. The board may assess

and collect fees to offset costs related to such hearings. Those fees shall be deposited to the credit of the Public Employees' Retirement System.

(4) Interest shall not be paid on any benefits, including, but not limited to, benefits that are delayed as a result of an administrative determination or an appeal from an administrative determination.

HISTORY:

Laws, 1995, ch. 624, § 6; Laws, 1999, ch. 544, § 5; Laws, 2002, ch. 627, § 11; Laws, 2010, ch. 528, § 4, eff from and after July 1, 2010.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Exhaustion of remedies.
3. Hearing officers.
4. New evidence.
5. Disability appeals committee.
6. Evidence in the record.

1. In general.

Decision of the Public Employees' Retirement System of Mississippi to deny an employee duty-related retirement benefits was based on substantial evidence and was not arbitrary of capricious because ample evidence supported its findings that the employee's condition was not disabling; the examining physicians, as well as an occupational therapist, did not believe that the employee's diagnosis was supported by medical findings. Public Emples. Ret. Sys. of Miss. v. Comardelle, 210 So. 3d 984, 2015 Miss. App. LEXIS 143 (Miss. Ct. App. 2015).

Decision of the Public Employees' Retirement System of Mississippi to deny an employee duty-related retirement benefits was based on substantial evidence and was not arbitrary of capricious because its conclusion that the employee was not permanently disabled was consistent with testimony from multiple healthcare providers; the employee's doctors failed to establish that her complaints were supported by medical findings, and she continued to work for five years after she twisted her ankle. Public Emples. Ret. Sys. of Miss. v. Comardelle, 210 So. 3d 984, 2015 Miss. App. LEXIS 143 (Miss. Ct. App. 2015).

This section does not apply retroactively. Public Emples. Retirement Sys. v. Hawkins, 1999 Miss. LEXIS 337 (Miss. Oct. 28, 1999), op. withdrawn, 775 So. 2d 108, 2000 Miss. LEXIS 217 (Miss. 2000).

2. Exhaustion of remedies.

Exhaustion of remedies was not required in an action to determine whether § 25-11-103(k)'s definition of earned compensation included reimbursements for meals, lodging, utilities, and travel expenses since (1) the facts in the action were uncontradicted, and there was no further need for factual development, (2) the action presented a question of law peculiarly within judicial competence, (3) the resolution of the action did not require the expertise of the Public Employees' Retirement Service, (4) no administrative process was being impaired, and (5) judicial intervention would inevitably be invoked. Public Emples. Ret. Sys. v. Hawkins, 2001 Miss. LEXIS 27 (Miss. Feb. 7, 2001).

Exhaustion of remedies was not required in connection with a dispute regarding whether § 25-11-103(k) includes travel expenses in the definition of maintenance, because the dispositive question was one of law, the interpretation of which does not require the expertise of the Public Employees' Retirement System Board of Trustees, and because the aggrieved individual was faced with a useless forum. Public Emples. Retirement Sys. v. Hawkins, 1999 Miss. LEXIS 337 (Miss. Oct. 28, 1999), op. withdrawn, 775 So. 2d 108, 2000 Miss. LEXIS 217 (Miss. 2000).

3. Hearing officers.

No reasonable interpretation of subsection (3) will allow the board of trustees to appoint a committee comprised partly of members of the medical board to sit as hearing officers in review of a decision by the medical board; it does not matter that the board of trustees is the final arbiter of the decision after the Disability Appeals Committee has made its recommendation. Dean v. Public Emples. Retirement Sys., 797 So. 2d 830, 2000 Miss. LEXIS 258 (Miss. 2000).

By allowing a physician who was a member of the medical board to participate in the appeals process reviewing the medical board's decision to deny a claimant's application for permanent disability benefits, the appeals committee was compromised in a manner which exceeded the statutory authority granted to it by the legislature. Byrd v. Public Emples. Retirement Sys., 774 So. 2d 434, 2000 Miss. LEXIS 255 (Miss. 2000).

4. New evidence.

Public Employees' Retirement System did not err in failing to request additional medical records because a guidance counselor produced almost no objective medical evidence regarding her physical and or psychological condition, and what she did produce did not support a finding of permanent disability; also, doctors' letters did not conclude the counselor was permanently disabled. Dearman v. Public Emples. Ret. Sys. of Miss., 205 So. 3d 1100, 2016 Miss. App. LEXIS 798 (Miss. Ct. App. 2016).

The section does not allow the consideration of new evidence on a motion to reconsider a case as, on appeal, the board of trustees is required to receive the record and make its determination based solely on matters contained therein. Byrd v. Public Emples. Retirement Sys., 774 So. 2d 434, 2000 Miss. LEXIS 255 (Miss. 2000).

5. Disability appeals committee.

Although appellant claimed that the Public Employees' Retirement System's medical board's decision, which adopted the recommendation of the disability appeals committee, should be reversed because the board failed to obtain a doctor's medical records, appellant only raised this issue for the first time when she appealed the board's decision to the circuit court, and appellant did not list the doctor on her medical information form as one of the physicians who had treated her within the last five years. Thus, the issue was without merit. Roberts v. Public Emples. Ret. Sys. of Miss., 198 So. 3d 463, 2016 Miss. App. LEXIS 494 (Miss. Ct. App. 2016).

A claimant's statutory guarantees of due process were violated when a physician sat in judgment of his own conclusion that the claimant was not entitled to disability benefits; the physician was a member of the Medical Review Board that originally denied the claim, and he also sat on the Disability Appeals Committee. Public Emples. Retirement Sys. v. Dishmon, 797 So. 2d 888, 2001 Miss. LEXIS 34 (Miss. 2001).

6. Evidence in the record.

Public Employees' Retirement System's (PERS) denial of disability benefits to the employee was improper because the record contained uncontradicted medical diagnoses of fibromyalgia, piriformis syndrome, Sjogren's syndrome, and depression, along with a doctor's uncontradicted opinion that the employee was disabled as a result of those four conditions. PERS never exercised its option to order an independent medical evaluation of the employee and PERS was required to base its decision upon evidence in the record before the agency pursuant to Miss. Code Ann. § 25-11-120(1). Stevison v. Public Emples. Ret. Sys., 966 So. 2d 874, 2007 Miss. App. LEXIS 709 (Miss. Ct. App. 2007), cert. dismissed, 2008 Miss. LEXIS 673 (Miss. Dec. 4, 2008).

§ 25-11-121. Investments.

(1) The board shall, from time to time, determine the current requirements for benefit payments and administrative expense which shall be maintained as a cash working balance, except that such cash working balance shall not exceed at any time an amount necessary to meet the current obligations of the system for a period of ninety (90) days. Any amounts in excess of such cash working balance shall be invested, as follows:

(a) Funds may be deposited in any institution insured by the Federal Deposit Insurance Corporation that maintains a facility that takes deposits in the State of Mississippi or a custodial bank;

(b) Corporate bonds and taxable municipal bonds; or corporate short-term obligations of corporations or of wholly owned subsidiaries of corporations, whose short-term obligations are rated A-2 or better by Standard and Poor's, rated P-2 or better by Moody's Investment Service, F-2 or better by Fitch Ratings, Ltd., or the equivalent of these ratings if assigned by another United States Securities and Exchange Commission designated Nationally Recognized Statistical Rating Organization;

(c) Agency and nonagency residential and commercial mortgage-backed securities and collateralized mortgage obligations;

(d) Asset-backed securities;

(e) Bank loans;

(f) Convertible bonds;

(g) Bonds of the Tennessee Valley Authority;

(h) Bonds, notes, certificates and other valid obligations of the United States, and other valid obligations of any federal instrumentality that issues securities under authority of an act of Congress and are exempt from registration with the Securities and Exchange Commission;

(i) Bonds, notes, debentures and other securities issued by any federal instrumentality and fully guaranteed by the United States;

(j) Interest-bearing revenue bonds or notes or bonds or notes which are general obligations of any state in the United States or of any city or county therein;

(k) Bonds of established non-United States companies and foreign government securities. The board may take requisite action to effectuate or hedge transactions or invest in currency through foreign or domestic banks, including the purchase and sale, transfer, exchange, or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(*l*) Shares of stocks, common and/or preferred, of corporations created by or existing under the laws of the United States or any state, district or territory thereof and shares of stocks, common and/or preferred, and convertible securities of non-United States companies; provided:

(i) The maximum investments in stocks shall not exceed eighty percent (80%) of the total book value of the total investment fund of the system;

(ii) The stock of such corporation shall:

1. Be listed on a national stock exchange; or
2. Be traded in the over-the-counter market;

(iii) The outstanding shares of such corporation shall have a total market value of not less than Fifty Million Dollars ($50,000,000.00);

(iv) The amount of investment in any one (1) corporation shall not exceed three percent (3%) of the book value of the assets of the system;

(v) The shares of any one (1) corporation owned by the system shall not exceed five percent (5%) of that corporation's outstanding stock.

The board may take requisite action utilizing foreign currency as an investment vehicle, or to effectuate or hedge transactions for shares of stocks and convertible securities of non-United States companies through foreign or domestic banks, including the purchase and sale, transfer, exchange, or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(m) Covered call and put options on securities or indices traded on one or more of the regulated exchanges;

(n) Pooled or commingled funds managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of trustees, and shares of investment companies and unit investment trusts registered under the Investment Company Act of 1940, where such pooled or commingled funds or shares are comprised of common or preferred stocks, bonds, money market instruments or other investments authorized under this section. Such investment in commingled funds or shares shall be held in trust; provided that the total book value of investments under this paragraph shall at no time exceed five percent (5%) of the total book value of all investments of the system. Any investment manager approved by the board of trustees shall invest such commingled funds or shares as a fiduciary;

(o) Pooled or commingled real estate funds or real estate securities managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of trustees. Such investment in commingled funds or shares shall be held in trust; provided that the total book value of investments under this paragraph shall at no time exceed ten percent (10%) of the total book value of all investments of the system. Any investment manager approved by the board of trustees shall invest such commingled funds or shares as a fiduciary. The ten percent (10%) limitation in this paragraph shall not be subject to the five percent (5%) limitation in paragraph (n) of this subsection;

(p) Types of investments not specifically authorized by this subsection if the investments are in the form of a separate account managed by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board; or a limited partnership or commingled fund approved by the board; provided that the total book value of investments under this paragraph shall at no time exceed ten percent (10%) of the total book value of all investments of the system. Any person or entity who exercises any discretionary authority or discretionary control respecting management of the separate account, limited partnership or commingled fund, or who exercises any authority or control respecting management or disposition of the assets of the separate account, limited partnership or commingled fund, shall exercise such authority or control as a fiduciary.

(2) All investments shall be acquired at prices not exceeding the prevailing market values for such investments.

(3) Any limitations herein set forth shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time. All investments shall be clearly marked to indicate ownership by the system and to the extent possible shall be registered in the name of the system.

(4) Subject to the above terms, conditions, limitations and restrictions, the board shall have power to sell, assign, transfer and dispose of any of the securities and investments of the system, provided that said sale, assignment or transfer has the majority approval of the entire board. The board may employ or contract with investment managers, evaluation services or other such services as determined by the board to be necessary for the effective and efficient operation of the system.

(5) Except as otherwise provided herein, no trustee and no employee of the board shall have any direct or indirect interest in the income, gains or profits of any investment made by the board, nor shall any such person receive any pay or emolument for his services in connection with any investment made by the board. No trustee or employee of the board shall become an endorser or surety, or in any manner an obligor for money loaned by or borrowed from the system.

(6) All interest derived from investments and any gains from the sale or exchange of investments shall be credited by the board to the account of the system.

(7) The board of trustees shall credit regular interest to the annuity savings account monthly. Regular interest shall mean such per centum rate to be compounded annually as set by the board of trustees through regulation.

(8) The board of trustees shall be the custodian of the funds of the system. All retirement allowance payrolls shall be certified by the executive director who shall furnish the board a surety bond in a company authorized to do business in Mississippi in such an amount as shall be required by the board, the premium to be paid by the board from the expense account.

(9) For the purpose of meeting disbursements for retirement allowances, annuities and other payments, cash may be kept available, not exceeding the requirements of the system for a period of ninety (90) days, on deposit in one or more banks or trust companies organized under the laws of the State of Mississippi or the laws of the United States, provided that the sum on deposit in any one (1) bank or trust company shall not exceed thirty-five percent (35%) of the paid-up capital and regular surplus of such bank or trust company.

(10) The board, the executive director and employees shall discharge their duties with respect to the investments of the system solely for the interest of the system with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, including diversifying the investments of the system so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(11) Documentary material or data made or received by the system which consists of trade secrets or commercial or financial information that relates to the investments of the system shall be exempt from the Mississippi Public Records Act of 1983 if the disclosure of the material or data is likely to impair the system's ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

HISTORY:

Codes, 1942, § 7446-20; Laws, 1952, ch. 299, § 20; Laws, 1954, ch. 308; Laws, 1958, ch. 545; Laws, 1966, ch. 617, § 2; Laws, 1968, ch. 578, § 4; Laws, 1973, ch. 450, § 6; Laws, 1978, ch. 382, § 2; Laws, 1980, ch. 397; Laws, 1986, ch. 472, § 3; Laws, 1987, ch. 325, § 2; Laws, 1990, ch. 388, § 1; Laws, 1991, ch. 590, § 1; Laws, 1992, ch. 575 § 1; Laws, 1993, ch. 617, § 9; Laws, 1995, ch. 624, § 7; Laws, 1996, ch. 472, § 7; Laws, 2000, ch. 628, § 8; Laws, 2004, ch. 361, § 1; Laws, 2005, ch. 441, § 1; Laws, 2006, ch. 438, § 1; Laws, 2006, ch. 474, § 15; Laws, 2007, ch. 305, § 1; Laws, 2008, ch. 359, § 10;

Laws, 2010, ch. 528, § 5; Laws, 2011, ch. 397, § 1; Laws, 2013, ch. 428, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note —

Section 1 of ch. 438, Laws of 2006, effective from and after July 1, 2006 (approved March 27, 2006), amended this section. Section 15 of ch. 474, Laws of 2006, effective from and after passage (approved March 20, 2006), also amended this section. As set out above, this section reflects the language of Section 15 of ch. 474, Laws of 2006, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference by substituting "paragraph shall not be subject to" for "subsection shall not be subject to." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (1) was corrected by substituting "paragraph (d) of this subsection (1)" for "Section 25-11-121(d)."

The Iran Divestment Act of 2015 (Sections 27-106-1 through 27-106-25) prohibits the Public Employees' Retirement System and the State Treasurer from investing funds with a person engaging in certain investment activities in Iran.

Cross References —

Authority of Board of the General Retirement System to invest and reinvest retirement system's funds under provisions of this section, see § 21-29-11.

Investment powers and duties of Board of Trustees administering firemen's and policemen's disability and relief funds, see § 21-29-107.

Responsibilities of Board of Trustees of Public Employees' Retirement System for investments authorized under this section, see §§ 21-29-125, 21-29-227.

Investment powers of board administering disability and relief funds for firemen and policemen in participating municipalities, see § 21-29-209.

Provision that, for purposes of Articles 1 and 3 of this chapter, "regular interest" shall mean interest compounded annually at such rate as shall be determined by the board in accordance with this section, see § 25-11-103.

Investment of funds of the supplemental legislative retirement plan in accordance with this section, see § 25-11-317.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Investment of deferred compensation, see § 25-14-5.

Public body permitted to hold executive session to discuss material or data exempt from the Mississippi Public Records Act of 1983 pursuant to this section, see § 25-41-7.

Mississippi Public Records Act of 1983 generally, see §§ 25-61-1 et seq.

Use of funds by veterans' farm and home board, see § 35-7-45.

Provision that the Mississippi Public Employees' Retirement System may legally invest any sinking funds, moneys or other funds within its control in bonds issued by the Mississippi Hospital Equipment and Facilities Authority, see § 41-73-69.

Bonds of Business Finance Corporation as legal investments for governmental bodies, see § 57-10-257.

Rule that bonds issued by state for purchase or improvement of ports or waterways are legal investments, see § 59-5-63.

Rule that Tennessee Valley Authority bonds are legal investments for trustees and other fiduciaries, see § 91-13-11.

Uniform Prudent Investor Act, see § 91-9-601 et seq.

Federal Aspects—

Investment Company Act of 1940 generally, see 15 USCS §§ 80(a)-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Five percent limitation on pooled or commingled funds is applicable to total Public Employees' Retirement System funds that may be invested in certain investment vehicles, but would not apply to investment vehicles selected by participant for investment of compensation deferred under Deferred Compensation Program, where statute provides that funds of deferred compensation program may be invested in any investments authorized for purchase by PERS. 1992 Miss. Op. Att'y Gen. 577.

Public Employees' Retirement System is authorized to invest in pooled or commingled funds and mutual funds up to five percent of total book value of all investments of System; shares or evidence of ownership of shares or interest in such investment must be in name of System. 1992 Miss. Op. Att'y Gen. 987.

RESEARCH REFERENCES

Am. Jur.
60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1608, 1610, 1611, 1617.

§ 25-11-123. Crediting of assets; financing.

All of the assets of the system shall be credited according to the purpose for which they are held to one (1) of four (4) reserves; namely, the annuity savings account, the annuity reserve, the employer's accumulation account, and the expense account.

(a) **Annuity savings account.** In the annuity savings account shall be accumulated the contributions made by members to provide for their annuities, including interest thereon which shall be posted monthly. Credits to and charges against the annuity savings account shall be made as follows:

(1) Beginning July 1, 2010, the employer shall cause to be deducted from the salary of each member on each and every payroll of the employer for each and every payroll period nine percent (9%) of earned compensation as defined in Section 25-11-103. Future contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation; however, any member earning at a rate less than Sixteen Dollars and Sixty-seven Cents ($16.67) per month, or Two Hundred Dollars ($200.00) per year, shall contribute not less than One Dollar ($1.00) per month, or Twelve Dollars ($12.00) per year.

(2) The deductions provided in paragraph (1) of this subsection shall be made notwithstanding that the minimum compensation provided by law for any member is reduced by the deduction. Every member shall be deemed to consent and agree to the deductions made and provided for in paragraph (1) of this subsection and shall receipt for his full salary or compensation, and payment of salary or compensation less the deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to the benefits provided under Articles 1 and 3. The board shall provide by rules for the methods of collection of contributions from members and the employer. The board shall have full authority to require the production of evidence necessary to verify the correctness of amounts contributed.

(b) **Annuity reserve.** The annuity reserve shall be the account representing the actuarial value of all annuities in force, and to it shall be charged all annuities and all benefits in lieu of annuities, payable as provided in this article. If a beneficiary retired on account of disability is restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the remainder of his contributions shall be transferred from the annuity reserve to the annuity savings account and credited to his individual account therein, and the balance of his annuity reserve shall be transferred to the employer's accumulation account.

(c) **Employer's accumulation account.** The employer's accumulation account shall represent the accumulation of all reserves for the payment of all retirement allowances and other benefits payable from contributions made by the employer, and against this account shall be charged all retirement allowances and other benefits on account of members. Credits to and charges against the employer's accumulation account shall be made as follows:

(1) On account of each member there shall be paid monthly into the employer's accumulation account by the employers for the preceding fiscal year an amount equal to a certain percentage of the total earned compensation, as defined in Section 25-11-103, of each member. The percentage rate of those contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation. Beginning January 1, 1990, the rate shall be fixed at nine and three-fourths percent (9-¾%). The board shall reduce the employer's contribution rate by one percent (1%) from and after July 1 of the year following the year in which the board determines and the board's actuary certifies that the employer's contribution rate can be reduced by that amount without causing the unfunded accrued actuarial liability amortization period for the retirement system to exceed twenty (20) years. Political subdivisions joining Article 3 of the Public Employees' Retirement System after July 1, 1968, may adjust the employer's contributions by agreement with the Board of Trustees of the Public Employees' Retirement System to provide service credits for any period before execution of the agreement based upon an actuarial determination of employer's contribution rates.

(2) On the basis of regular interest and of such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making that valuation, shall determine the uniform and constant percentage of the earnable compensation of each member which, if contributed by the employer on the basis of compensation of the member throughout his entire period of membership service, would be sufficient to provide for the payment of any retirement allowance payable on his account for that service. The percentage rate so determined shall be known as the "normal contribution rate." After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the percentage rate of the salary of all members obtained by deducting from the total liabilities on account of membership service the amount in the employer's accumulation account, and dividing the remainder by one percent (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees

and regular interest. The normal rate of contributions shall be determined by the actuary after each valuation.

(3) The total amount payable in each year to the employer's accumulation account shall not be less than the sum of the percentage rate known as the "normal contribution rate" and the "accrued liability contribution rate" of the total compensation earnable by all members during the preceding year, provided that the payment by the employer shall be sufficient, when combined with the amounts in the account, to provide the allowances and other benefits chargeable to this account during the year then current.

(4) The accrued liability contribution shall be discontinued as soon as the accumulated balance in the employer's accumulation account shall equal the present value, computed on the basis of the normal contribution rate then in force, or the prospective normal contributions to be received on account of all persons who are at that time members.

(5) All allowances and benefits in lieu thereof, with the exception of those payable on account of members who receive no prior service credit, payable from contributions of the employer, shall be paid from the employer's accumulation account.

(6) Upon the retirement of a member, an amount equal to his retirement allowance shall be transferred from the employer's accumulation account to the annuity reserve.

(7) The employer's accumulation account shall be credited with any assets authorized by law to be credited to the account.

(d) **Expense account.** The expense account shall be the account to which the expenses of the administration of the system shall be charged, exclusive of amounts payable as retirement allowances and as other benefits provided herein. The Legislature shall make annual appropriations in amounts sufficient to administer the system, which shall be credited to this account. There shall be transferred to the State Treasury from this account, not less than once per month, an amount sufficient for payment of the estimated expenses of the system for the succeeding thirty (30) days. Any interest earned on the expense account shall accrue to the benefit of the system. However, notwithstanding the provisions of Sections 25-11-15(10) and 25-11-105(f)(v)5, all expenses of the administration of the system shall be paid from the interest earnings, provided the interest earnings are in excess of the actuarial interest assumption as determined by the board, and provided the present cost of the administrative expense fee of two percent (2%) of the contributions reported by the political subdivisions and instrumentalities shall be reduced to one percent (1%) from and after July 1, 1983, through June 30, 1984, and shall be eliminated thereafter.

(e) **Collection of contributions.** The employer shall cause to be deducted on each and every payroll of a member for each and every payroll period, beginning subsequent to January 31, 1953, the contributions payable by the member as provided in Articles 1 and 3.

The employer shall make deductions from salaries of employees as provided in Articles 1 and 3 and shall transmit monthly, or at such time as the board of trustees designates, the amount specified to be deducted to the Executive Director of the Public Employees' Retirement System. The executive director, after making a record of all those receipts, shall deposit such amounts as provided by law.

(f)(1) Upon the basis of each actuarial valuation provided herein, the board of trustees shall biennially determine the normal contribution rate and the accrued liability contribution rate as provided in this section. The sum of these two (2) rates shall be known as the "employer's contribution rate." Beginning on earned compensation effective January 1, 1990, the rate computed as provided in this section shall be nine and three-fourths percent (9-¾%). The board shall reduce the employer's contribution rate by one percent (1%) from and after July 1 of the year following the year in which the board determines and the board's actuary certifies that the employer's contribution rate can be reduced by that amount without causing the unfunded accrued actuarial liability amortization period for the retirement system to exceed twenty (20) years. The percentage rate of those contributions shall be fixed biennially by the board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation.

(2) The amount payable by the employer on account of normal and accrued liability contributions shall be determined by applying the employer's contribution rate to the amount of compensation earned by employees who are members of the system. Monthly, or at such time as the board of trustees designates, each department or agency shall compute the amount of the employer's contribution payable, with respect to the salaries of its employees who are members of the system, and shall cause that amount to be paid to the board of trustees from the personal service allotment of the amount appropriated for the operation of the department or agency, or from funds otherwise available to the agency, for the payment of salaries to its employees.

(3) Except as otherwise provided in Section 25-11-106:

(i) Constables shall pay employer and employee contributions on their net fee income as well as the employee contributions on all direct treasury or county payroll income.

(ii) The county shall be responsible for the employer contribution on all direct treasury or county payroll income of constables.

(4) Except as otherwise provided in Section 25-11-106.1, chancery and circuit clerks shall be responsible for both the employer and employee share of contributions on the proportionate share of net income attributable to fees, as well as the employee share of net income attributable to direct treasury or county payroll income, and the employing county shall be responsible for the employer contributions on the net income attributable to direct treasury or county payroll income.

(5) Once each year, under procedures established by the system, each employer shall submit to the Public Employees' Retirement System a copy of their report to Social Security of all employees' earnings.

(6) The board shall provide by rules for the methods of collection of contributions of employers and members. The amounts determined due by an agency to the various funds as specified in Articles 1 and 3 are made obligations of the agency to the board and shall be paid as provided herein. Failure to deduct those contributions shall not relieve the employee and employer from liability thereof. Delinquent employee contributions and any accrued interest shall be the obligation of the employee and delinquent employer contributions and any accrued interest shall be the obligation of the employer. The employer may, in its discretion, elect to pay any or all of the interest on delinquent employee contributions. From and after July 1, 1996, under rules and regulations established by the board, all employers are authorized and shall transfer all funds due to the Public Employees' Retirement System electronically and shall transmit any wage or other reports by computerized reporting systems.

HISTORY:

Codes, 1942, § 7446-21; Laws, 1952, ch. 299, § 21; Laws, 1960, ch. 453, § 4; Laws, 1966, ch. 618, § 2; Laws, 1968, ch. 578, § 5; Laws, 1973, ch. 450, § 4; Laws, 1982, ch. 452; Laws, 1989, ch. 303, § 2; Laws, 1989, ch. 513, § 3; Laws, 1991, ch. 513, § 9; Laws, 1992, ch. 576 § 7; Laws, 1994, ch. 601, § 6; Laws, 1995, ch. 624, § 8; Laws, 1999, ch. 544, § 6; Laws, 2002, ch. 627, § 12; Laws, 2002, ch. 636 , § 3; Laws, 2010, ch. 1, 1st Ex Sess, § 1; Laws, 2011, ch. 402, § 3; Laws, 2011, ch. 469, § 6; Laws, 2013, ch. 488, § 2, eff from and after Oct. 1, 2013.

Joint Legislative Committee Note —

Section 12 of ch. 627, Laws of 2002, effective July 1, 2002, amended this section. Section 3 of ch. 636, Laws of 2002, effective July 1, 2002, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the May 16, 2002, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the second sentence of (a)(2) by substituting "paragraph (1) of this subsection" for "paragraph (1) of this section." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Section 3 of ch. 402, Laws of 2011, effective from and after passage (approved March 14, 2011), amended this section. Section 6 of ch. 469, Laws of 2011, effective from and after passage (approved March 30, 2011), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Legislative Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its July 13, 2011, meeting.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (d) was corrected by substituting "Sections 25-11-15(10) and 25-11-105(f)(v)5" for "Sections 25-11-15(10) and 25-11-105(f)(5)E."

Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Cross References —

Definition of "accumulated contributions" as the sum of amounts deducted from a member's compensation and credited to his individual account in the annuity savings account, together with regular interest thereon as provided in this section, see § 25-11-103.

Membership of retirement system, see § 25-11-105.

Payment to estate as intestate property of actuarial equivalent of remaining payments on reduced retirement allowance annuity, see § 25-11-115.

Employers paying required member contributions on earnings after June 30, 1982, see § 25-11-124.

Financing of optional retirement program for employees of state institutions of higher learning, see § 25-11-411.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

OPINIONS OF THE ATTORNEY GENERAL

The use of the actuarial cost of benefits to establish previous service credit is not authorized under Sections 25-11-105 and 25-11-123. However, these provisions authorize the Board of Trustees to determine the rate of interest that will be applied under section 25-11-105(k) and as part of the calculation to determine the adjusted employer's contribution rate under section 25-11-123(c)(1). 1995 Miss. Op. Att'y Gen. 32.

Constables are considered self-employed for the fee portion of their earnings and must pay the employer and employee contributions on such earnings. The county is responsible for matching contributions for direct payments made by the board to a constable, for example, fail case monies or payment for services rendered as a baliff in a civil proceeding. The county is not obligated to pay matching contributions for such fees as those earned in serving process. 2004 Miss. Op. Att'y Gen. 315.

RESEARCH REFERENCES

ALR.

Limitations of actions applicable to action by trustees of employee benefit plan to enforce delinquent employer contributions under ERISA (29 USCS § 1132(a)). 90 A.L.R. Fed. 374.

Am. Jur.

60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1608, 1610, 1611, 1617.

§ 25-11-124. Employer to pay required member contributions; tax treatment; funding; retirement treatment.

Each employer shall pick up the member contributions required by Section 25-11-123, Mississippi Code of 1972, for all compensation earned after June 30, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and the Mississippi Income Tax Code; however, each employer shall continue to withhold federal and state income taxes based upon such contributions until the internal revenue service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer may pick up these contributions by a reduction in the cash salary of the member, or by an offset against a future salary increase, or by a combination of a reduction in salary and offset against a future salary increase. If member contributions are picked up they shall be treated for all purposes of the Public Employees' Retirement System in the same manner and to the same extent as member contributions made prior to the date picked up.

HISTORY:
Laws, 1982, ch. 350, eff from and after July 1, 1982.

Cross References —
Employer to reimburse system for cost of on-site compliance audit if audit reveals failure to make contributions as required by this section, see § 25-11-119.1.

Employer contributions to optional retirement program for employees of state institutions of higher learning, see § 25-11-411.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

A similar provision with respect to member contributions to the highway safety patrol's relief and disability fund, see § 25-13-8.

Federal Aspects—
Section 414(h) of the United States Internal Revenue Code, see 26 USCS § 414(h).

§ 25-11-125. Employer contributions for certain fee paid public officers.

(1) The board of supervisors may appropriate and include in its budget for public purposes a sufficient sum to pay the required employer contribution to the Public Employees' Retirement System for all fee paid elected officials in judicial capacities of the county and supervisors' districts, and those contributions shall be included by the clerk of the board in his regular reports and remittals to the Executive Director of the Public Employees' Retirement System for other county officers and regular county employees whose employer contributions are not included in and paid from the annual county budget.

(2) If the county elects to be responsible for contributions on the net fee income of the constable, the board of supervisors of the county shall appropriate and include in its budget a sufficient sum to pay to the Public Employees' Retirement System for each constable holding office in that county the required employer contributions on the net fee income and all direct payments to the constable from the county, and those contributions shall be handled by the clerk of the board in the manner required by subsection (1) of this section.

HISTORY:
Codes, 1942, § 2941.5; Laws, 1966, ch. 621, § 1; Laws, 2013, ch. 488, § 3, eff from and after Oct. 1, 2013.

Cross References —
Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

RESEARCH REFERENCES

ALR.
Limitations of actions applicable to action by trustees of employee benefit plan to enforce delinquent employer contributions under ERISA (29 USCS § 1132(a)). 90 A.L.R. Fed. 374.

§ 25-11-127. Benefits upon reemployment of retired persons.

(1)(a) No person who is being paid a retirement allowance or a pension after retirement under this article shall be employed or paid for any service by the State of Mississippi, including services as an employee, contract worker, contractual employee or independent contractor, until the retired person has been retired for not less than ninety (90) consecutive days from his or her effective date of retirement. After the person has been retired for not less than ninety (90) consecutive days from his or her effective date of retirement or such later date as established by the board, he or she may be reemployed while being paid a retirement allowance under the terms and conditions provided in this section.

(b) No retiree of this retirement system who is reemployed or is reelected to office after retirement shall continue to draw retirement benefits while so reemployed, except as provided in this section.

(c) No person employed or elected under the exceptions provided for in this section shall become a member under Article 3 of the retirement system.

(2) Any person who has been retired under the provisions of Article 3 and who is later reemployed in service covered by this article shall cease to receive benefits under this article and shall again become a contributing member of the retirement system. When the person retires again, if the reemployment exceeds six (6) months, the person shall have his or her benefit recomputed, including service after again becoming a member, provided that the total retirement allowance paid to the retired member in his or her previous retirement shall be deducted from the member's retirement reserve and taken into consideration in recalculating the retirement allowance under a new option selected.

(3) The board shall have the right to prescribe rules and regulations for carrying out the provisions of this section.

(4) The provisions of this section shall not be construed to prohibit any retiree, regardless of age, from being employed and drawing a retirement allowance either:

(a) For a period of time not to exceed one-half (½) of the normal working days for the position in any fiscal year during which the retiree will receive no more than one-half (½) of the salary in effect for the position at the time of employment, or

(b) For a period of time in any fiscal year sufficient in length to permit a retiree to earn not in excess of twenty-five percent (25%) of retiree's average compensation.

To determine the normal working days for a position under paragraph (a) of this subsection, the employer shall determine the required number of working days for the position on a full-time basis and the equivalent number of hours representing the full-time position. The retiree then may work up to one-half (½) of the required number of working days or up to one-half (½) of the equivalent number of hours and receive up to one-half (½) of the salary for the position. In the case of employment with multiple employers, the limitation shall equal one-half (½) of the number of days or hours for a single full-time position.

Notice shall be given in writing to the executive director, setting forth the facts upon which the employment is being made, and the notice shall be given within five (5) days from the date of employment and also from the date of termination of the employment.

(5) Except as otherwise provided in subsection (6) of this section, the employer of any person who is receiving a retirement allowance and who is

employed in service covered by subsection (4) of this section as an employee or a contractual employee shall pay to the board the full amount of the employer's contribution on the amount of compensation received by the retiree for his or her employment in accordance with regulations prescribed by the board. The retiree shall not receive any additional creditable service in the retirement system as a result of the payment of the employer's contribution. This subsection does not apply to persons who are receiving a retirement allowance and who contract with an employer to provide services as a true independent contractor, as defined by the board through regulation.

(6)(a) A member may retire and continue in municipal or county elective office provided that the member has reached the age and/or service requirement that will not result in a prohibited in-service distribution as defined by the Internal Revenue Service, or a retiree may be elected to a municipal or county office, provided that the person:

(i) Files annually, in writing, in the office of the employer and the office of the executive director of the system before the person takes office or as soon as possible after retirement, a waiver of all salary or compensation and elects to receive in lieu of that salary or compensation a retirement allowance as provided in this section, in which event no salary or compensation shall thereafter be due or payable for those services; however, any such officer or employee may receive, in addition to the retirement allowance, office expense allowance, mileage or travel expense authorized by any statute of the State of Mississippi; or

(ii) Elects to receive compensation for that elective office in an amount not to exceed twenty-five percent (25%) of the retiree's average compensation. In order to receive compensation as allowed in this subparagraph, the retiree shall file annually, in writing, in the office of the employer and the office of the executive director of the system, an election to receive, in addition to a retirement allowance, compensation as allowed in this subparagraph.

(b) The municipality or county in which the retired person holds elective office shall pay to the board the amount of the employer's contributions on the full amount of the regular compensation for the elective office that the retired person holds.

(c) As used in this subsection, the term "compensation" does not include office expense allowance, mileage or travel expense authorized by a statute of the State of Mississippi.

HISTORY:

Codes, 1942, § 7446-22; Laws, 1952, ch. 299, § 22; Laws, 1958, ch. 547, § 2; Laws, 1960, ch. 453, 5; Laws, 1962, ch. 580; Laws, 1966, ch. 619, § 1; Laws, 1974, ch. 519; Laws, 1975, ch. 515; Laws, 1977, ch. 450, § 6; Laws, 1983, ch. 443; Laws, 1984, ch. 359; Laws, 1985, ch. 504, § 4; Laws, 2001, ch. 529, § 1; Laws, 2002, ch. 627, § 13; Laws, 2010, ch. 528, § 6; Laws, 2010, ch. 546, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Section 1 of ch. 546, Laws of 2010, effective July 1, 2010 (approved April 28, 2010), amended this section. Section 6 of ch. 528, Laws of 2010, effective July 1, 2010 (approved April 14, 2010), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 546, Laws of 2010, which contains language that specifically provides that it supersedes § 25-11-127 as amended by Laws of 2010, ch. 528, § 6.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the last sentence of (5), in the version of the section effective from and after July 1, 2011, was corrected by substituting "This subsection" for "This paragraph."

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Written filing of beneficiary designation, see § 25-11-103.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

JUDICIAL DECISIONS

1. In general.

The exception that this section shall not apply to any person employed because of special knowledge or experience can be invoked only in cases where it clearly appears that there is a real need for the services of a person who possesses "special knowledge or experience" to perform properly the duties of the employment, that the person employed possesses that special knowledge or experience. Board of Trustees v. Lowry, 228 Miss. 555, 88 So. 2d 585, 1956 Miss. LEXIS 546 (Miss. 1956).

Under the provisions of this section a person who is being paid a retirement allowance under federal law is not eligible for any employment to be paid for by the state, unless he comes within one of the exceptions mentioned in this section and a person claiming the benefit of any such exception must show that he comes within the exception and it is not enough that the claimant showed that the department head had employed him because of the special knowledge and experience which the departmental head had considered the complainant to possess or that the departmental head decided that the claimant was lawfully entitled to be employed in said service and paid therefor. Board of Trustees v. Lowry, 228 Miss. 555, 88 So. 2d 585, 1956 Miss. LEXIS 546 (Miss. 1956).

OPINIONS OF THE ATTORNEY GENERAL

Certificated employee may retire from employment in the middle of the school year, begin to receive retirement benefits, and, upon proper notice to the Retirement System, be rehired pursuant to new contract, provided the period of hire does not exceed 120 days or one-half of the normal working days for the position. 1992 Miss. Op. Att'y Gen. 959.

If a teacher is employed in full time service with the intent of teaching the full year, then he or she is not eligible for retirement allowance while in such covered full time employment, and any modification of contractual arrangement to enable a member or retiree to draw such benefits if there is no termination of employment could amount to collusion to commit a fraud on the Retirement System. 1992 Miss. Op. Att'y Gen. 959.

City may not pay the health insurance premium for an alderman who is a retired school teacher participating in a school health insurance program and who has waived his salary and compensation from the city in order to receive retirement benefits from the public employees retirement system. 1992 Miss. Op. Att'y Gen. 970.

City may not pay health insurance premium for alderman who has waived all salary and compensation in order to receive retirement benefits from public employees retirement system, but city may, if it so elects, pay premiums for alderman after alderman has reimbursed city in advance. 1992 Miss. Op. Att'y Gen. 720.

Miss. Code Section 25-11-127 specifically addresses reemployment of retired member of Public Employees' Retirement System (PERS), and conditions and limitations thereof; in addition, initial eligibility for participation in Optional Retirement Plan (ORP), as well as any eligibility for participation in ORP after retirement thereunder, is based on eligibility for participation in PERS; if member may not be employed in state service while drawing retirement allowance from PERS (or its alternative Plan), then upon being reemployed in teaching or administrative faculty position with state institutions of higher learning and which position is covered by PERS (and thereby eligible for coverage in the ORP), retirement allowance must cease; if retirement benefit is not terminated, employee may only be employed for such period of time as is allowed under the provisions of Miss. Code Section 25-11-127. 1993 Miss. Op. Att'y Gen. 197.

Section 25-11-127 prohibits a person from receiving both retirement benefits from PERS and compensation for any service in covered state service. 1995 Miss. Op. Att'y Gen. 151.

An individual who elects to retire and is re-employed under the limited conditions allowed by 25-11-127 does not relinquish his or her status as a retiree for purposes of the retirement statutes or the state insurance statutes. Such a retiree would continue to receive retirement benefits and would be responsible for payment of his or her insurance premiums in accord with section 25-15-261(4) [now repealed]. 1996 Miss. Op. Att'y Gen. 133.

Pursuant Section 25-11-127, the Board of Trustees of the Public Employees Retirement System possesses the authority to adopt rules and regulations that would clarify what is required for a lawful withdrawal from service, in order to effectuate a retirement benefit prior to subsequent reemployment by the same or another covered agency. 1996 Miss. Op. Att'y Gen. 563.

Under Section 25-11-127, an elected official in the Town of Itta Bena may not receive retirement benefits and serve in office with pay. In order to receive retirement benefits, the official would annually have to file a written statement in the office of his employer and in the office of the Executive Director of the Public Employees Retirement System of his intent to waive all salary or compensation, and elect to receive in lieu thereof, a retirement allowance as provided under the laws governing the Public Employees Retirement System. 1996 Miss. Op. Att'y Gen. 540.

"Per diem", in connection with compensation, wages or salary, means "pay for a day's service", and Miss. Code Section 25-3-69 provides a uniform per diem rate of $40.00 per day for authorized state officers and employees. 1997 Miss. Op. Att'y Gen. 357.

Any per diem, office expense allowance, mileage or travel expenses for councilmen drawing Mississippi State Retirement must be issued pursuant to a specific state statute authorizing such payments, and municipalities may not enact independent ordinances on this subject. 1997 Miss. Op. Att'y Gen. 357.

An attorney who contracts with a board of supervisors to represent the board on an annual basis may not receive retirement benefits during the term of the contract. 1997 Miss. Op. Att'y Gen. 449.

City councilmen may not receive a per diem allowance from the city in addition to receiving retirement benefits. 1997 Miss. Op. Att'y Gen. 727.

A county circuit clerk could receive benefits from the Public Employees Retirement System and could continue to serve as such elected official provided she waived all salary or compensation in the manner required by this section, and could, only to the extent permitted by statute, receive per diem, office expense allowance, mileage or travel expense. 1999 Miss. Op. Att'y Gen. 443.

A city or county can pay health insurance premiums on retirees who elect to return to work and receive compensation, and such insurance is not "compensation." 2002 Miss. Op. Att'y Gen. 328.

As a retiree continuing in office, the wages of a county judge can not be more than 25% of his final average compensation paid on a prorated basis as earned, that is, each month the retiree would be entitled to receive 1/12th of the 25% of final average compensation. 2002 Miss. Op. Att'y Gen. 455.

A state retiree who is elected to a municipal or county office, after making the required filings, is authorized to receive compensation for serving in that elective office an amount not to exceed twenty-five of said retiree's average compensation, to be paid on a pro-rata basis. 2002 Miss. Op. Att'y Gen. 688.

Retirees elected to local office must waive their salary or compensation, except for statutorily authorized per diem and expenses, in order to continue in office and receive their retirement benefits. 2003 Miss. Op. Att'y Gen. 80.

Even if the position of warden for a correctional facility is classified as a contract position, an individual would not be able to draw a retirement benefit while employed as the warden. 2003 Miss. Op. Att'y Gen. 240.

Employees covered by the State and School Employees Health Insurance Plan who elect to retire and are re-employed under the limited conditions allowed by this section do not relinquish their status of "retiree" for the purposes of the retirement statutes or the state insurance statutes. Therefore, the state cannot pay the insurance premiums for retirees who are covered under the Plan who return to work under the limited conditions allowed by this section. 2003 Miss. Op. Att'y Gen. 591.

Where there is authority for the employer to pay non-taxable life and health insurance premiums, the payment of such premiums is not to be used in the calculation of the 25% income limitation or in calculating the limited compensation under the half-time/half-pay option. 2004 Miss. Op. Att'y Gen. 400.

The salary of a family member would not count as part of the twenty-five percent compensation of a retired circuit or chancery clerk. 2005 Miss. Op. Att'y Gen. 56.

RESEARCH REFERENCES

Am. Jur.
60 Am. Jur. 2d, Pensions and Retirement Funds § 1690.

§ 25-11-129. Exemptions from taxation, execution, and assignment; deductions from retirement allowances for payment of employer or system sponsored group life or health insurance.

(1) The right of a person to an annuity, a retirement allowance or benefit, or to the return of contributions, or to any optional benefit or any other right accrued or accruing to any person under the provisions of Articles 1 and 3, the system and the monies in the system created by said articles, are hereby exempt from any state, county or municipal ad valorem taxes, income taxes, premium taxes, privilege taxes, property taxes, sales and use taxes or other taxes not so named, notwithstanding any other provision of law to the contrary, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically otherwise provided in this article and except as otherwise provided in subsection (2) of this section.

(2) Any retired member or beneficiary receiving a retirement allowance or benefit under this article may authorize the system to make deductions from the retirement allowance or benefit for the payment of employer or system sponsored group life or health insurance. The deductions authorized under this subsection shall be subject to rules and regulations adopted by the board.

HISTORY:
Codes, 1942, § 7446-23; Laws, 1952, ch. 299, § 23; Laws, 1987, ch. 327, § 1; Laws, 1990, ch. 523, § 2; Laws, 1993, ch. 523, § 3; Laws, 2004, ch. 531, § 2, eff from and after July 1, 2004.

Editor's Notes —
Laws of 1990, ch. 523, § 8, effective from and after January 1, 1990, and Laws of 1993, ch. 523, § 6, effective from and after January 1, 1994, provide as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References —
Effect of recall of retired Supreme Court judges on retirement benefits, see § 9-3-6.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Exemption of deferred compensation from execution and taxation, see § 25-14-5.

Personal property exempt from seizure under execution or attachment, see § 85-3-1.

JUDICIAL DECISIONS

1. Lump sum payments.
Chancellor erred in calculating the present value of a husband's state retirement account and in ordering him to pay the wife a third of his retirement benefits because the chancellor could not go beyond the record to calculate the

present market value of the husband's retirement account, i.e., use information obtained from the state handbook and website, and, despite the name used to describe it, the husband was statutorily prohibited from transferring a lump-sum figure from his account. Pruitt v. Pruitt, 144 So. 3d 1249, 2014 Miss. App. LEXIS 411 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

ALR.

What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79 A.L.R.4th 1081.

§ 25-11-131. Liability for unlawful receipt and retention of payment after death of member or beneficiary; falsification of records; penalty; correction of errors in payments.

(1) Any person or corporation who shall receive and retain any payment, after the death of a member or after the death of the beneficiary of any member, which amount is not lawfully due, shall be liable for the repayment of such amount to the retirement system plus interest thereon at ten percent (10%) per annum plus all costs of collection. Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor if the amount obtained or attempted to be obtained does not exceed the amount of Five Hundred Dollars ($500.00), and, on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or imprisonment in the county jail not exceeding six (6) months, or both; if such amount obtained or attempted to be obtained shall exceed the sum of Five Hundred Dollars ($500.00), such person or persons shall be guilty of a felony and, on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding Ten Thousand Dollars ($10,000.00) or by imprisonment in the State Penitentiary not exceeding five (5) years, or both.

(2) Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error upon detection, regardless of the length of time between the reporting error or the time payment started and the time the board became aware of the error, and, as far as practicable, adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. This responsibility is, and has been, the duty of the board since the creation of the retirement system.

HISTORY:

Codes, 1942, § 7446-24; Laws, 1952, ch. 299, § 24; Laws, 1983, ch. 449, § 3; Laws, 2000, ch. 628, § 9, eff from and after July 1, 2000.

Cross References —

Written filing of beneficiary designation, see § 25-11-103.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

§ 25-11-133. Guaranty; vested right to benefits; maximum annual retirement allowance.

(1) The maintenance of actuarial reserves for the various allowances and benefits under Articles 1 and 3, and the payment of all annuities, retirement allowances, refunds and other benefits granted hereunder are made obligations of the employer's accumulation accounts. All income, interest and dividends derived from deposits and investments authorized by those articles shall be used for the payment of the obligations of the system.

(2) In the event of the termination of the Public Employees' Retirement System established pursuant to the provisions of Section 25-11-101 et seq., all members of the system as of the date of termination of the system shall be deemed to have a vested right to benefits to the extent and in the same manner that rights would be vested under the statute existing as of the date of termination of the system, except that any member who, because of a termination of the system has not fulfilled the requirements for length of service, shall nonetheless be entitled to compensation as of the date that such member would otherwise be eligible, with such compensation to be computed on the basis of time actually a member of the service and compensation actually earned during the time a member, in the manner now provided by statute.

In the event of a deficit in the availability of funds for payment due under the provisions of the Public Employees' Retirement System, an appropriation shall be made sufficient for the payment thereof as an obligation of the state.

(3)(a) Notwithstanding any provisions of this section or this title to the contrary, the maximum annual retirement allowance attributable to the employer contributions payable by the system to a member shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued thereunder as applicable to governmental plans as the term is defined under Section 414(d) of the Internal Revenue Code.

(b) The board is authorized to provide by rule or regulation for the payment of benefits as provided under this chapter to members or beneficiaries of the retirement system at a time and under circumstances not otherwise provided for in this chapter to the extent that the payment is required to maintain the system as a qualified retirement plan for purposes of federal income tax laws.

(4) Notwithstanding any other provision of this plan, all distributions from this plan shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, applicable to governmental plans, as defined in Section 414(d) of the Internal Revenue Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Internal Revenue Code. Further, the regulations shall override any plan provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code.

(5) The actuarial assumptions used to convert a retirement allowance from the normal form of payment to an optional form of payment shall be an appendix to Article 3 and subject to approval by the board based upon certification by the actuary.

(6) Notwithstanding any other provision of this plan, the maximum compensation that can be considered for all plan purposes shall not be greater than that allowed under Section 401(a)(17) of the Internal Revenue Code.

HISTORY:

Codes, 1942, § 7446-26; Laws, 1952, ch. 299, § 26; Laws, 1979, ch. 414; Laws, 1992, ch. 576 § 8; Laws, 1995, ch. 624, § 9; Laws, 2001, ch. 438, § 3; Laws, 2002, ch. 627, § 14; Laws, 2007, ch. 348, § 1, eff from and after July 1, 2007.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Written filing of beneficiary designation, see § 25-11-103.

Membership of retirement system, see § 25-11-105.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

Federal Aspects—

Sections 401, 414, and 415 of the Internal Revenue Code, see 26 USCS §§ 401, 414, 415.

§ 25-11-135. Former laws remain in force.

Nothing contained in this article shall be construed as repealing any existing law of this state providing for the retirement of teachers, firemen, policemen, or any other public employees.

HISTORY:

Codes, 1942, § 7446-28; Laws, 1952, ch. 299, § 28, eff January 1, 1953.

Cross References —

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

§ 25-11-137. Transfer of law enforcement officers' or firemen's funds.

(1)(a) Any law enforcement officer or fireman who has been covered under this article or under Section 21-29-101 et seq., Section 21-29-201 et seq., or Section 25-13-1 et seq., and who changes his employment from one jurisdiction to another jurisdiction, or has previously made that change, may elect to transfer retirement service credit earned while covered under the retirement system of the former jurisdiction to that of the latter as provided in this section.

(b) Any law enforcement officer or fireman transferring as described in paragraph (a) of this subsection and having paid retirement funds under this article or under Section 21-29-101 et seq., Section 21-29-201 et seq., or Section 25-13-1 et seq., must pay into the retirement system to which he is transferring the full amount of employee contributions that he would have paid into that system if he had been a member of that system for each year of creditable service that is being transferred, together with regular interest that would have been earned by that system on those contributions, and he must also pay, or the system from which he is transferring must pay, into the system to which he is being transferred, an amount equal to that which the employer would have paid if he had been a member of that system for each year transferred, together with regular interest that would have been earned by that system on those contributions. The retirement system from which he is being transferred shall be required to pay into the system to which he is transferring any funds credited to his account. Any additional funds that may be required shall be paid by the person being transferred. Those payments may be made in quarterly increments. Failure to make these proper adjustment payments will void any transfer of service credits.

(2) The benefits that are being currently paid by the system in which the law enforcement officer or fireman has last been a member, and the requirements for retirement or disability benefits, shall be those applicable to the officer falling under the provisions of this section. Any law enforcement officer or fireman who elects to transfer retirement service credit may immediately transfer the funds and service as provided for in subsection (1) of this section; however, the amounts that are transferred by the law enforcement officer or fireman and his employer, if applicable, and the service credit related to the transfer of funds, shall not be used in any benefit calculation or determination of eligibility for benefits until the person has remained a contributing member of the retirement system to which he is transferring for the minimum period necessary to qualify for a monthly retirement allowance or benefit. Upon the complete transfer and payment of that credit, all time spent in the covered law enforcement or fire department service, as noted above, within and for the State of Mississippi or the political subdivisions thereof, shall apply to the time required by law necessary to effect the retirement or disability of the officer.

HISTORY:

Codes, 1942, § 7446-41; Laws, 1968, ch. 576, §§ 1, 2; Laws, 1975, ch. 398; Laws, 1999, ch. 544, § 7; Laws, 2004, ch. 561, § 7, eff from and after July 1, 2004.

Cross References —

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

OPINIONS OF THE ATTORNEY GENERAL

A law enforcement officer or fireman can transfer time served from a jurisdiction which was not participating in a disability and retirement fund so long as full payment for the time is made to the system of the jurisdiction accepting the employee. 1997 Miss. Op. Att'y Gen. 769.

§ 25-11-139. Payment, commencement of benefits.

Any retirement allowance or other annuity or benefit provided by Articles 1 and 3 shall be paid in equal monthly installments for life and shall not be increased, decreased, revoked or repealed, except for error upon detection, regardless of the length of time between the reporting error or the time payment started and the time the board became aware of the error, or except where specifically otherwise provided by said articles. This responsibility is, and has been, the duty of the board since the creation of the retirement system.

Pursuant to Section 25-11-111, Mississippi Code of 1972, it is and has been the sole responsibility of the member or beneficiary thereof to apply for benefits and no benefits shall be paid for any period prior to the first of the month following the receipt of such application for such benefits, but in no event prior to termination of employment, except as authorized in Section 25-11-114.

HISTORY:

Codes, 1942, § 7446-26; Laws, 1952, ch. 299, § 26; Laws, 1994, ch. 601, § 7; Laws, 2000, ch. 628, § 10, eff from and after July 1, 2000.

Cross References —

Written filing of beneficiary designation, see § 25-11-103.

Retirement allowance for death or disability in line of duty, see § 25-11-114.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Application of this article to the limitation on the amount of retirement allowance from the supplemental legislative retirement plan, see § 25-11-309.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Retroactive payment.

1. In general.

Neither the Public Employees' Retirement System nor the circuit court had the discretion to circumvent the clear mandate of this section that no benefits be paid for any period prior to the first of the month following receipt of the application for benefits. Public Emples. Ret. Sys. v. Howard, 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

2. Retroactive payment.

Trial court properly upheld an order from the Mississippi Public Employees' Retirement System concluding that a city employee was not eligible for disability retirement benefits until February 1, 2001, where the employee's employment with the city was not severed until the employee resigned on January 30, 2001; the employee was not entitled to back benefits. Hayes v. Public Emples. Ret. Sys., 960 So. 2d 471, 2007 Miss. LEXIS 397 (Miss. 2007).

Circuit could not award disability status to a teacher retroactively to the teacher's application as no benefits were to be paid for any period prior to the first of the month following receipt of the teacher's application. Public Emples. Ret. Sys. v. Howard, 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

In awarding retroactive disability benefits, no benefits can be awarded for any period prior to the first month following receipt of a disability application; therefore, a circuit court erred in awarding an employee retroactive benefits prior to the month when the application was received. Public Emples. Ret. Sys. v. Howard, 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

RESEARCH REFERENCES

Am. Jur.

19A Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 1 (complaint or declaration for judicial declaration that ordinance requires increases in pension payments commensurate with increases in salaries on which pensions are based).

19A Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 8 (complaint or declaration for mandamus to compel payment of pension benefits by widow of public employee).

19A Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 16 (order directing payment of pension and adoption of resolution to that end).

§ 25-11-141. Group life and health benefits for retired persons.

The board of trustees may enter into an agreement with insurance companies, hospital service associations, medical or health care corporations, health maintenance organizations, or government agencies authorized to do business in the state for issuance of a policy or contract of life, health, medical, hospital or surgical benefits, or any combination thereof, for those persons receiving a service, disability or survivor retirement allowance from any system administered by the board. Notwithstanding any other provision of this chapter, the policy or contract also may include coverage for the spouse and dependent children of such eligible person and for such sponsored dependents as the board considers appropriate. If all or any portion of the policy or contract premium is to be paid by any person receiving a service, disability or survivor retirement allowance, such person shall, by written authorization, instruct the board to deduct from the retirement allowance the premium cost and to make payments to such companies, associations, corporations or agencies.

The board may contract for such coverage on the basis that the cost of the premium for the coverage will be paid by the person receiving a retirement allowance.

The board is authorized to accept bids for such optional coverage and benefits and to make all necessary rules pursuant to the purpose and intent of this section.

HISTORY:

Laws, 1988, ch. 385; Laws, 2002, ch. 636, § 10; Laws, 2016, ch. 397, § 18, eff from and after July 1, 2016.

Cross References —

Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Change of position in state service of participant in optional retirement program for employees of institutions of higher learning, see § 25-11-413.

§§ 25-11-143 and 25-11-145. Repealed.

Repealed by Laws of 2016, ch. 397, § 24, effective July 1, 2016.

§ 25-11-143. [Laws, 2002, ch. 636, § 1, eff from and after July 1, 2002.]

§ 25-11-145. [Laws, 2002, ch. 636, § 2; Laws, 2006, ch. 474, § 16, eff from and after July 1, 2006.]

Editor's Notes —

Former § 25-11-143 required the board to design a health insurance plan for current and future retirees, defined "retiree" and provided timing for the implementation of the plan.

Former § 25-11-145 related to the investment of the funds received for the insurance program established in former § 25-11-143.

ARTICLE 5.

TEACHERS' RETIREMENT SYSTEM.

Sec.
25-11-201. Continuance of certain vested rights.

§ 25-11-201. Continuance of certain vested rights.

(1) As soon after July 1, 1952, as practicable, but not later than July 15, 1952, the board of trustees of the Teachers' Retirement System shall transfer

all funds and securities held by the Teachers' Retirement System to the trustees of the Public Employees' Retirement System created by Sections 25-11-1 through 25-11-139, and the corporation known as the Teachers' Retirement System of Mississippi shall be dissolved as of the date thereof. The board of trustees of the Teachers' Retirement System shall at that time make a full and complete report and accounting as to all funds and securities in its possession and under its control, and shall transfer all books, records, papers, and equipment under its control to the board of trustees of the Public Employees' Retirement System. Under the provisions of said Sections 25-11-1 through 25-11-139, the board of trustees of the Public Employees' Retirement System shall from that date proceed with the liquidation of the Teachers' Retirement System as follows:

(a) Any former member of the Teachers' Retirement System who has been retired under any of the provisions of Chapter 161, Laws of 1944, or any former member who may be retired under said act prior to July 1, 1952, shall continue to receive the benefits provided by said Chapter 161, as amended, just as if said act had not been repealed, together with an additional retirement benefit in the amount of twenty percent (20%) thereof. Where necessary, an additional retirement benefit shall be made to any retired teacher under this section in order to provide a minimum retirement benefit of Forty Dollars ($40.00) per month. From and after July 1, 1968, each and every benefit payment outlined above shall be increased by twenty-five percent (25%), making the minimum payment Fifty Dollars ($50.00) per month and the maximum payment Seventy-five Dollars ($75.00) per month. From and after January 1, 1967, any former teacher who had retired from teaching services on account of age prior to the date of abolishment of the Teachers' Retirement System of Mississippi and who at that time had thirty (30) years or more of teaching service, the last twenty (20) years of which were in this state, and who has attained age sixty-five (65) years or over shall be entitled to receive the minimum monthly retirement payment, from and after making application for such payment to the board of trustees of the Public Employees' Retirement System and furnishing the proper proof of age and services. The payment of these benefits is hereby made an obligation of the State of Mississippi. The Legislature shall annually appropriate an amount sufficient to pay these benefits which shall be credited to a trust fund to be designated as "Fund B." Payment of benefits to members of the Teachers' Retirement System retired prior to July 1, 1952, shall be paid from said "Fund B" and from no other source, except that any public school district or public junior college, by action of the board of trustees thereof, with funds derived locally, may provide additional supplementary benefits for teachers retired on or before July 1, 1952, but not to exceed one percent of the instructional budget in any fiscal year shall be so used.

(b) If any person having made contributions under such Chapter 161 dies prior to its repeal but before retiring, his accumulated contributions shall be paid out as he shall have directed in writing. In the absence of such written directions his accumulated contributions shall be paid to his estate.

This paragraph shall apply also to any person dying subsequent to repeal, but before receiving his contributions.

(c) Interest on members' accumulated contributions shall cease on August 1, 1952.

(d) The accumulated contributions of the several members shall be set aside in a trust fund designated as "Fund A" to be held for refund to the respective persons or beneficiaries entitled thereto; no interest shall be allowed. Until refunded or otherwise disposed of, such funds, interest therein, and rights thereto shall not be subject to legal, judicial, or other process.

(e) Within six (6) months after July 1, 1952, or as soon thereafter as practicable, the accumulated contributions of the members, less an amount sufficient to pay the employees' contributions as provided in Article 1 from the effective date of the federal-state agreement to July 1, 1952, shall be returned to the members respectively entitled thereto, or shall be used to purchase an additional annuity in accordance with Section 25-11-123(a)(3) if the member in writing shall affirmatively direct the custodian of such funds to transfer such member's contributions to the public employees' retirement system to be used for this purpose.

In any event, if no election has been made, such member's contributions shall be returned to him or, if deceased, be paid as he shall have directed. In the absence of such written direction, his accumulated contributions shall be paid to his estate.

(f) All other funds of whatsoever nature and kind transferred from the Teachers' Retirement System of Mississippi shall be set aside in the state treasury as a trust fund to be designated as "Fund C." From this fund there shall be paid the employer's contribution as provided in said Article 1 from the effective date of the federal-state agreement to January 1, 1953. Any balance remaining in this fund after such payment shall be transferred to "Fund B" to be applied toward the payment of an additional allowance of twenty percent (20%) as provided by subparagraph (a) of this section to persons retired for service or disability on or before July 1, 1952, under Chapter 161, Laws of 1944, as amended, or their beneficiaries.

(2) The effectiveness of that provision in subparagraph (1)(a) of this section, which adopts a minimum benefit of Fifty Dollars ($50.00) per month for all teachers retired under the former Teachers' Retirement System, shall be contingent upon the annual appropriation of sufficient funds to pay the same for the fiscal year commencing July 1, 1970, and each succeeding fiscal year.

HISTORY:

Codes, 1942, § 6294-31; Laws, 1952, ch. 302, § 2; Laws, 1954, ch. 284; Laws, 1964, ch. 390, § 1; Laws, 1966 Ex Sess, ch. 47, § 1; Laws, 1968, ch. 577, § 1; Laws, 1970, ch. 514, § 1, eff from and after July 1, 1970.

Editor's Notes —

In (1)(e), there is a reference to Section 25-11-123(a)(3); paragraph (a)(3) was deleted by Section 7 of Chapter 576, Laws of 1992.

RESEARCH REFERENCES

Am. Jur.
60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1614, 1615.

ARTICLE 7.

SUPPLEMENTAL LEGISLATIVE RETIREMENT PLAN.

Sec.

25-11-301. Creation and management of supplemental legislative retirement plan.
25-11-303. Applicable definitions.
25-11-305. Membership.
25-11-307. Custodian of fund; financing; expense.
25-11-309. Retirement allowance under plan; waiver of benefits.
25-11-311. Refund of contributions; death prior to retirement; reelection after receiving refund.
25-11-311.1. Persons to whom benefits payable in event of death of designated beneficiary.
25-11-312. Acceptance of eligible rollover distribution or direct transfer of funds from qualified plan in payment of costs to reinstate previously withdrawn service credit.
25-11-313. Employer to pay required member contributions; tax treatment; funding; retirement treatment.
25-11-315. Credit for prior service.
25-11-317. Administration of supplemental legislative retirement plan.
25-11-319. Exemptions from taxation, execution, and assignment; deductions from retirement allowances for payment of employer or system sponsored group life or health insurance.

§ 25-11-301. Creation and management of supplemental legislative retirement plan.

There is hereby established and placed under the management of the Board of Trustees of the Public Employees' Retirement System of Mississippi a supplemental legislative retirement plan for the purpose of providing supplemental retirement allowances and other benefits under the provisions of this article for elected members of the State Legislature and the President of the Senate and their beneficiaries. The retirement plan provided by this article shall go into operation on July 1, 1989, when contributions by members shall begin and benefits shall become payable. This retirement plan is designed to supplement and is in addition to the provisions of Section 25-11-1 et seq. Under the terms of this article, the members of the State Legislature and the President of the Senate shall retain all social security benefits under Article 1 and additional state retirement and disability benefits under Article 3 of the Public Employees' Retirement Law of 1952, as amended. This article is a supplement to those sections, and is designed to provide more benefits for members of the State Legislature and the President of the Senate by reason of their service to the state.

HISTORY:
Laws, 1989, ch. 303, § 3, eff from and after July 1, 1989.

JUDICIAL DECISIONS

1. Equal protection.

Dismissal for failure to state a claim of a retired state employee's equal protection challenge to the Legislature's establishment of a supplemental retirement plan for legislators was proper; since the different treatment of retired legislators had a rational basis in the financial uncertainties they risked, the proper course in seeking a remedy was political, not judicial. Dillard v. Musgrove, 838 So. 2d 261, 2003 Miss. LEXIS 60 (Miss. 2003).

OPINIONS OF THE ATTORNEY GENERAL

A member of the Legislature may retire from the Legislature and receive a benefit from the Supplemental Legislative Retirement Plan (SLRP) and at the same time accept a covered position in the Public Employees' Retirement System (PERS), thereby continuing to be reported to PERS in the PERS covered position while drawing a benefit from the SLRP position. 2000 Miss. Op. Att'y Gen. 75.

§ 25-11-303. Applicable definitions.

For the purposes of this article, the definitions in Section 25-11-5 and Section 25-11-103 shall apply unless a different meaning is plainly expressed by the context.

HISTORY:

Laws, 1989, ch. 303, § 4, eff from and after July 1, 1989.

§ 25-11-305. Membership.

(1) The membership of the Supplemental Legislative Retirement Plan shall be composed as follows:

(a) All members of the State Legislature who are currently serving in the capacity of an elected official of the State Legislature and the person currently serving as President of the Senate shall become members of this system on July 1, 1989, unless they file with the board within thirty (30) days after July 1, 1989, on a form prescribed by the board, a notice of election not to be covered in the membership of the Supplemental Legislative Retirement Plan and a duly executed waiver of all present and prospective benefits which would otherwise inure to them on account of their participation in the plan.

(b) All members of the State Legislature and the President of the Senate who are elected after July 1, 1989.

(2) Any state legislators who would have otherwise qualified for membership in the plan under subsection (1) of this section but who were excluded from membership by other provisions of this section as it read before March 26, 1991, shall become members of the plan upon March 26, 1991, and shall receive creditable service in the plan for the period from July 1, 1989, to March 26, 1991, upon payment of the proper employee and employer contributions for that period.

(3) Membership in the plan shall cease by a member withdrawing his accumulated contributions, or by a member withdrawing from active service with a retirement allowance, or by death of the member.

(4) No benefits under the plan shall accrue or otherwise be payable to any person who does not qualify for membership in the plan under subsection (1) of this section.

HISTORY:
Laws, 1989, ch. 303, § 5; Laws, 1991, ch. 445 § 1, eff from and after passage (approved March 26, 1991).

§ 25-11-307. Custodian of fund; financing; expense.

(1) The Board of Trustees of the Public Employees' Retirement System of Mississippi shall act as custodian of the funds for members of the State Legislature and the President of the Senate, and shall receive to the credit of such fund all donations, bequests, appropriations, and all funds available as an employer's contribution thereto from any source whatsoever. The State Legislature shall each month deduct from the compensation of each member three percent (3%) thereof, and shall pay the amount so deducted to the board of trustees to be credited to the fund for the members. The compensation of each member shall include all remuneration or amounts paid, except mileage allowance. From the funds credited to this account, the board of trustees shall pay retirement allowances, disability benefits, survivors' benefits and expenses, and shall refund contributions as provided. The fund for the Supplemental Legislative Retirement Plan shall be maintained as a separate fund, separate from all other funds held by the board of trustees and shall be used only for the payment of benefits provided for by the plan, or amendments thereto.

(2) On account of each member there shall be paid monthly into the fund for members of the Supplemental Legislative Retirement Plan by the State Legislature from funds available an amount equal to a certain percentage of the compensation of each member to be known as the "normal contributions," and an additional amount equal to a percentage of his compensation to be known as the "accrued liability contribution." The percentage rate of such contributions shall be fixed by the board of trustees on the basis of the liabilities of the plan for the various allowances and benefits as shown by the actuarial valuation. Until changed by the board of trustees, the contribution rate shall be six and one-third percent (6-⅓%) of the annual compensation of all members, which shall include all remuneration or amounts paid, except mileage allowance.

(3) The board of trustees is hereby authorized to deduct two percent (2%) of all employer's contributions paid into the fund for members of the State Legislature and the President of the Senate to be transferred to the expense fund of the Public Employees' Retirement System of Mississippi to defray the cost of administering this fund.

HISTORY:
Laws, 1989, ch. 303, § 6; Laws, 1989, ch. 583, § 2; Laws, 2000, ch. 628, § 21; Laws, 2000, 1st Ex Sess, ch. 1, § 2, eff from and after passage (approved June 29, 2000).

Joint Legislative Committee Note —
Section 21 of ch. 628, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 2 of ch. 1, Laws of 2000, 1st Extraordinary Session, effective from and after

its passage (approved June 29, 2000), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 1, Laws of 2000, 1st Extraordinary Session, which by its terms, supercedes the amendments made to this section by ch. 628.

Editor's Notes —

On June 29, 2000, the Legislature met in the 1st 2000 Extraordinary Session to pass Laws of 2000, 1st Extraordinary Session, ch. 1, which was signed by the Governor on June 29, 2000, and which repealed the amendments made to this section by Laws of 2000, ch. 628. Chapter 1 of Laws of 2000, 1st Extraordinary Session.

OPINIONS OF THE ATTORNEY GENERAL

The Public Employees' Retirement System is required by subsection (1) to administer the Supplemental Legislative Retirement Plan as a retirement plan separate and distinct from other plans administered by the system. 2000 Miss. Op. Att'y Gen. 75.

§ 25-11-309. Retirement allowance under plan; waiver of benefits.

(1) The retirement allowance from the Supplemental Legislative Retirement Plan shall consist of fifty percent (50%) of an amount equal to the retirement allowance determined by creditable service as an elected Senator or Representative of the State Legislature or as President of the Senate payable by the Public Employees' Retirement System in accordance with Section 25-11-101 et seq.

(2) The percentage of the retirement allowance as provided in this section shall be transferred from the annuity savings account of the member and the employer accumulation account in the Supplemental Legislative Retirement Plan to the retirement account of the member in the Public Employees' Retirement System as provided.

(3)(a) Notwithstanding any provisions of this section or this title to the contrary, the maximum annual retirement allowance attributable to the employer contributions payable under the Supplemental Legislative Retirement Plan to a member shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued thereunder applicable to governmental plans as the term is defined under Section 414(d) of the Internal Revenue Code.

(b) The board is authorized to provide by rule or regulation for the payment of benefits as provided under this chapter to members or beneficiaries of the Supplemental Legislative Retirement System at a time and under circumstances not otherwise provided for in this chapter to the extent that the payment is required to maintain the Supplemental Legislative Retirement System as a qualified retirement plan for purposes of federal income tax laws.

(4)(a) A retiree or beneficiary may, on a form prescribed by and filed with the Executive Director of the Public Employees' Retirement System, irrevocably waive all or a portion of any benefits from the plan to which the retiree or beneficiary is entitled under this article. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the plan and the Public Employees' Retirement System from any claim to the waived retirement benefits.

(b) Any waiver under this subsection shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement; however, a beneficiary may execute a waiver of benefits under this subsection.

(c) The plan shall retain all amounts that are not used to pay benefits because of a waiver executed under this subsection.

(d) The board of trustees of the Public Employees' Retirement System may provide rules and regulations for the administration of waivers under the subsection.

HISTORY:

Laws, 1989, ch. 303, § 7; Laws, 2000, ch. 628, § 20; Laws, 2000, 1st Ex Sess, ch. 1, § 1; Laws, 2002, ch. 627, § 15; Laws, 2007, ch. 348, § 2; Laws, 2010, ch. 528, § 7, eff from and after July 1, 2010.

Joint Legislative Committee Note —

Section 20 of ch. 628, Laws of 2000, effective from and after July 1, 2000, amended this section. Section 1 of ch. 1, Laws of 2000, 1st Extraordinary Session, effective from and after its passage (approved June 29, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 1, Laws of 2000, 1st Extraordinary Session, which by its terms, supercedes the amendments made to this section by ch. 628.

Editor's Notes —

On June 29, 2000, the Legislature met in the 1st 2000 Extraordinary Session to pass Laws of 2000, 1st Extraordinary Session, ch. 1, which was signed by the Governor on June 29, 2000, and which repealed the amendments made to this section by Laws of 2000, ch. 628. Chapter 1 of Laws of 2000, 1st Extraordinary Session.

Federal Aspects—

Sections 414 and 415 of the Internal Revenue Code, see 26 USCS §§ 414, 415.

§ 25-11-311. Refund of contributions; death prior to retirement; reelection after receiving refund.

(1) A member may be paid a refund of the amount of accumulated contributions to the credit of the member in the annuity savings account, provided the member has withdrawn from state service and further provided the member has not returned to state service on the date the refund of the accumulated contributions would be paid. The refund of the contributions to the credit of the member in the annuity savings account shall be paid within ninety (90) days from receipt in the office of the retirement system of the properly completed form requesting that payment. In the event of death before retirement of any member whose spouse and/or children are not entitled to a retirement allowance, the accumulated contributions to the credit of the deceased member in the annuity savings account shall be paid to the designated beneficiary on file in writing in the office of the executive director of the board of trustees within ninety (90) days from receipt of a properly completed form requesting that payment. If there is no such designated beneficiary on file for the deceased member in the office of the system, upon the filing of a proper request with the board, the contributions to the credit of the deceased member in the annuity savings account shall be refunded under Section 25-11-311.1(1). The payment of the refund shall discharge all obligations of the retirement system to the member on account of any creditable service rendered by the member before the receipt of the refund. By the

acceptance of the refund, the member shall waive and relinquish all accrued rights in the plan.

(2) Pursuant to the Unemployment Compensation Amendments of 1992 (Public Law 102-318 (USCS)), a member or the spouse of a member who is an eligible beneficiary making application for a refund under this section may elect, on a form prescribed by the board under rules and regulations established by the board, to have an eligible rollover distribution of accumulated contributions payable under this section paid directly to an eligible retirement plan, as defined under applicable federal law, or an individual retirement account. If the member or the spouse of a member who is an eligible beneficiary makes that election and specifies the eligible retirement plan or individual retirement account to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. A nonspouse beneficiary may elect to have an eligible rollover distribution of accumulated contributions paid in the form of a direct trustee-to-trustee transfer to an individual retirement account established to receive the distribution on behalf of the nonspouse beneficiary. Flexible rollovers under this subsection shall not be considered assignments under Section 25-11-129.

(3)(a) If any person who has received a refund, is reelected to the Legislature or as President of the Senate and again becomes a member of the plan before July 1, 2007, the member may repay all or part of the amounts previously received as a refund, together with regular interest covering the period from the date of refund to the date of repayment; however, the amounts that are repaid by the member and the creditable service related thereto shall not be used in any benefit calculation or determination until the member has remained a contributor to the system for a period of at least four (4) years after the member's reentry into state service. Repayment for that time shall be made beginning with the most recent service for which refund has been made. Upon the repayment of all or part of that refund and interest, the member shall again receive credit for the period of creditable service for which full repayment has been made to the system.

(b) If any person who has received a refund, reenters the state service and again becomes a member of the system on or after July 1, 2007, the member may repay all or part of the amount previously received as a refund, together with regular interest covering the period from the date of refund to the date of repayment; however, the amounts that are repaid by the member and the creditable service related thereto shall not be used in any benefit calculation or determination until the member has remained a contributor to the system for a period of at least eight (8) years after the member's reentry into state service. Repayment for that time shall be made beginning with the most recent service for which refund has been made. Upon the repayment of all or part of that refund and interest, the member shall again receive credit for the period of creditable service for which full repayment has been made to the system.

HISTORY:
Laws, 1989, ch. 303, § 8; Laws, 2000, ch. 628, § 11; Laws, 2002, ch. 313, § 3; Laws, 2007, ch. 407, § 9; Laws, 2008, ch. 359, § 6; Laws, 2016, ch. 397, § 15; Laws, 2017, ch. 338, § 7, eff from and after July 1, 2017.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of (3)(b) by substituting "on or after July 1, 2007" for "after July 1, 2007." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Amendment Notes —
The 2017 amendment, in (3)(a), deleted "became a member of the system before July 1, 2007" following "If any person who" and inserted "before July 1, 2007" in the first sentence, and deleted "in increments of not less than one-quarter (¼) year of creditable service" following "shall be made" in the second sentence; in (3)(b), deleted "became a member of the system on or after July 1, 2007" following "If any person who" and inserted "on or after July 1, 2007" in the first sentence, and deleted "in increments of not less than one (1) month of creditable service" following "shall be made" in the second sentence.

§ 25-11-311.1. Persons to whom benefits payable in event of death of designated beneficiary.

(1) Except as provided in subsection (2) of this section, where benefits are payable to a designated beneficiary or beneficiaries and the designated beneficiary or beneficiaries as provided by the member on the most recent form filed with the system are deceased or otherwise disqualified at the time such benefits become payable, the following persons, in descending order of precedence, shall be eligible to receive such benefits:

(a) The surviving spouse of the member or retiree;

(b) The children of the member or retiree or their descendants, per stirpes;

(c) The brothers and sisters of the member or retiree or their descendants, per stirpes;

(d) The parents of the member or retiree;

(e) The executor or administrator on behalf of the member or retiree's estate;

(f) The persons entitled by law to distribution of the member or retiree's estate.

(2) Any monthly benefits payable to a beneficiary who dies prior to cashing his or her final check(s) and/or any additional benefits payable pursuant to Section 25-11-112 still payable at the death of a beneficiary receiving monthly benefits shall be paid as follows:

(a) The surviving spouse of the beneficiary;

(b) The children of the beneficiary or their descendants, per stirpes;

(c) The brothers and sisters of the beneficiary or their descendants, per stirpes;

(d) The parents of the beneficiary;

(e) The executor or administrator on behalf of the beneficiary's estate;

(f) The persons entitled by law to distribution of the beneficiary's estate.

(3) In the event no claim is made by any individual listed in subsection (2) of this section, a distribution may be made pursuant to the provisions of subsection (1) of this section.

(4) Payment under the provisions above shall bar recovery by any other

person of the benefits distributed. Payment of benefits made to one or more members of a class of individuals are made on behalf of all members of the class. Any members of the class coming forward after payment is made must look to those who received the payment.

HISTORY:
Laws, 2000, ch. 628, § 3, eff from and after July 1, 2000.

§ 25-11-312. Acceptance of eligible rollover distribution or direct transfer of funds from qualified plan in payment of costs to reinstate previously withdrawn service credit.

From and after July 1, 2000, subject to the rules adopted by the board, the supplemental legislative retirement plan shall accept an eligible rollover distribution or a direct transfer of funds from another eligible retirement plan, as defined under applicable federal law, or an individual retirement account, in payment of all or a portion of the cost to reinstate previously withdrawn service credit as permitted by the plan. The plan may only accept rollover payments in an amount equal to or less than the balance due for reinstatement of service credit. The rules adopted by the board of trustees shall condition the acceptance of a rollover or transfer from another eligible retirement plan or an individual retirement account on the receipt of information necessary to enable the plan to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

HISTORY:
Laws, 2000, ch. 628, § 5; Laws, 2002, ch. 313, § 4, eff from and after passage (approved Mar. 14, 2002).

§ 25-11-313. Employer to pay required member contributions; tax treatment; funding; retirement treatment.

The employer shall pick up the member contributions required by this article for all compensation earned on and after July 1, 1989, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and the Mississippi Income Tax Code. However, the employer shall continue to withhold federal and state income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer may pick up these contributions by a reduction in the cash salary of the member, or by offset against future salary increase, or by a combination of a reduction in salary and offset against future salary increase. If member contributions are picked up they shall be treated for all purposes of the Supplemental Legislative Retirement Plan in the same manner and to the same extent as member contributions made prior to the date picked up.

HISTORY:
Laws, 1989, ch. 303, § 9, eff from and after July 1, 1989.

Federal Aspects—
Internal Revenue Code § 414(h) can be found at 26 USCS 414(h).

§ 25-11-315. Credit for prior service.

(1) Any member of the State Legislature or the President of the Senate who becomes a member of the plan on July 1, 1989, shall be eligible for prior service as a member of the State Legislature or as President of the Senate. Each member shall submit to the board a verification of prior service as a member of the State Legislature or as President of the Senate. Upon receipt of that prior service statement, the board shall issue a prior service certificate certifying to each member the length of prior service for which credit has been allowed on the basis of the statement of service. Additional prior service regulations in force shall be those found in Section 25-11-101 et seq.

(2)(a) Any member of the State Legislature or the President of the Senate who becomes a member of this plan after July 1, 1989, but before July 1, 2007, shall not be allowed prior service unless the member serves as a member of the State Legislature or as President of the Senate for a minimum of four (4) years and contributes to the plan for a minimum period of four (4) years.

(b) Any member of the State Legislature or the President of the Senate who becomes a member of this plan on or after July 1, 2007, shall not be allowed prior service unless the member serves as a member of the State Legislature or as President of the Senate for a minimum of eight (8) years and contributes to the plan for a minimum period of eight (8) years.

HISTORY:
Laws, 1989, ch. 303, § 10; Laws, 2007, ch. 407, § 10, eff from and after July 1, 2007.

§ 25-11-317. Administration of supplemental legislative retirement plan.

(1) The general administration and responsibility for the proper operation of the plan and for making effective the provisions hereof are vested in the Board of Trustees of the Public Employees' Retirement System of Mississippi.

(2) The board shall invest all funds in accordance with Section 25-11-121.

(3) The board shall designate an actuary who shall be the technical advisor of the board on matters regarding the operation of the plan and shall perform such other duties as are required in connection therewith.

(4) At least once in each two-year period following the date of establishment, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the plan and shall make a valuation of the contingent assets and liabilities of the plan.

(5) On the basis of regular interest and tables last adopted by the board, the actuary shall make biennial valuation of the contingent assets and liabilities of the plan.

(6) The board shall keep such data as shall be necessary for the actuarial valuation of the contingent assets and liabilities of the plan and for checking the experience of the plan.

(7) The board shall determine from time to time the rate of regular interest for use in all calculations, with the rate of five percent (5%) per annum applicable unless changed by the board.

(8) Subject to the limitations hereof, the board from time to time shall establish rules and regulations for the administration of the plan and for the transaction of business.

(9) The board shall keep a record of all its proceedings under this article which shall be open to public inspection, except for individual member records. The system shall not disclose the name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains.

(10) The Executive Secretary of the Public Employees' Retirement System of Mississippi shall serve as the executive secretary of the plan.

HISTORY:

Laws, 1989, ch. 303, § 11, eff from and after July 1, 1989.

§ 25-11-319. Exemptions from taxation, execution, and assignment; deductions from retirement allowances for payment of employer or system sponsored group life or health insurance.

(1) The right of a person to an annuity, a retirement allowance or benefit, or to the return of contributions, or to any optional benefit or any other right accrued or accruing to any person under the provisions of the Supplemental Legislative Retirement Plan, and the monies in the plan created by this article, are exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically otherwise provided in this article.

(2) Any retired member or beneficiary receiving a retirement allowance or benefit under this article may authorize the system to make deductions from the retirement allowance or benefit for the payment of employer or system sponsored group life or health insurance. The deductions authorized under this subsection shall be subject to rules and regulations adopted by the board.

HISTORY:

Laws, 1989, ch. 303, § 12; Laws, 1990, ch. 523, § 3; Laws, 1993, ch. 523, § 4; Laws, 2004, ch. 531, § 3, eff from and after July 1, 2004.

Editor's Notes —

Laws of 1990, ch. 523, § 8, effective from and after January 1, 1990, and Laws of 1993, ch. 523, § 6, effective from and after January 1, 1994, provide as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

ARTICLE 9.

FEASIBILITY STUDY OF ESTABLISHING SEPARATE RETIREMENT PLAN FOR VOLUNTEER FIRE FIGHTERS.

Sec.
25-11-351. Feasibility study of establishing separate retirement plan for volunteer fire fighters; expenses of study.

§ 25-11-351. Feasibility study of establishing separate retirement plan for volunteer fire fighters; expenses of study.

The Public Employees' Retirement System of Mississippi shall conduct a study of the feasibility of establishing a separate and distinct retirement plan for the actively participating volunteer fire fighters of this state serving with any fire department in the State of Mississippi. This study shall determine the approximate number of potential covered participants, a schedule of proposed benefits, proposed administrative processes, and a funding method with actuarial data in support thereof.

All expenses of the Public Employees' Retirement System of Mississippi in conducting the study shall be paid from its current budget. However, if the study demonstrates the viability of such a plan and such a plan is established, then the Public Employees' Retirement System of Mississippi may recover all expenses actually made in conducting the study from the retirement plan established as a result thereof.

HISTORY:

Laws, 1990, ch. 467, § 2, eff from and after July 1, 1990.

ARTICLE 11.

OPTIONAL RETIREMENT PROGRAM FOR EMPLOYEES OF STATE INSTITUTIONS OF HIGHER LEARNING.

Sec.
25-11-401. Eligibility for optional program.
25-11-403. Contributions to annuity contracts and mutual funds.
25-11-405. Administration of program; delegation of responsibilities.
25-11-407. Designation of life insurance companies for purchase of annuity contracts and mutual funds.
25-11-409. Election to participate in program; time of election.
25-11-411. Contributions made by reduction in salary; contributions by employer; amount; accrued liability contribution fund.
25-11-413. Ineligibility for membership in Public Employees' Retirement System.
25-11-415. Deductions from employers' contribution to administer program; expense fund.
25-11-417. Benefits payable not obligations of state but of designated companies.

Sec.	
25-11-419.	Exemption from state or municipal tax; exemption from levy, garnishment, attachment, or other process; application of State Life and Health Insurance Guaranty Association Act.
25-11-421.	Qualification under Section 401(a) or conformity with section 403(b) of Internal Revenue Code; determination letter from Internal Revenue Service.
25-11-423.	Actuarial study; report of study.

§ 25-11-401. Eligibility for optional program.

There is established an optional retirement program for employees of the state institutions of higher learning included in Section 37-101-1, Mississippi Code of 1972, who are appointed or employed after July 1, 1990. To be eligible to participate in the optional retirement program, a newly appointed employee must:

(a)(i) Hold a teaching or administrative faculty position, or

(ii) Hold a position as an intern or resident in training at the University Medical Center or the College of Veterinary Medicine at Mississippi State University under a teaching program at such institutions; and

(b) Be eligible for membership in the Public Employees' Retirement System of Mississippi.

HISTORY:

Laws, 1990, ch. 458, § 1; Laws, 2001, ch. 319, § 1, eff from and after July 1, 2001.

Editor's Notes —

Laws, 2001, ch. 319, § 1, amended this section to authorize interns and residents in training at the University Medical Center and the College of Veterinary Medicine at Mississippi State University to be eligible to participate in the optional retirement program.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 25-11-401 provides, in part, that optional retirement program is established for employees of state institutions of higher learning who are appointed or employed after July 1, 1990; it further states that to be eligible to participate in optional retirement program, newly appointed employee must hold teaching or administrative faculty position, and must be eligible for membership in Public Employees' Retirement System of Mississippi. 1993 Miss. Op. Att'y Gen. 197.

§ 25-11-403. Contributions to annuity contracts and mutual funds.

Retirement and death benefits shall be provided to participants in the optional retirement program by contribution to annuity contracts, fixed or variable in nature, mutual fund accounts or similar investment products, or a combination thereof, at the option of the participant. The state and the participants shall contribute, in accordance with this article, toward the purchase of benefits under those contracts or accounts, which contracts or accounts shall become the property of the participants.

HISTORY:

Laws, 1990, ch. 458, § 2; Laws, 2005, ch. 322, § 1, eff from and after July 1, 2005.

§ 25-11-405. Administration of program; delegation of responsibilities.

The Board of Trustees of the Public Employees' Retirement System shall provide for the administration of the optional retirement program. The board of trustees may delegate to the state institutions of higher learning certain responsibilities for administering the optional retirement program with respect to each institution's own employees.

HISTORY:
Laws, 1990, ch. 458, § 3, eff from and after passage (approved March 24, 1990).

§ 25-11-407. Designation of life insurance companies for purchase of annuity contracts and mutual funds.

The Board of Trustees of the Public Employees' Retirement System shall designate not less than three (3) nor more than five (5) companies to provide annuity contracts, mutual fund accounts or similar investment products, and the types of investment contracts or funds that may be offered by those companies. In making those designations, the board of trustees shall consider and be guided by:

(a) The nature and extent of the rights and benefits to be provided by those contracts or accounts, or both, for participants and their beneficiaries;

(b) The relation of those rights and benefits to the amount of contributions to be made;

(c) The suitability of those rights and benefits to the needs of the participants;

(d) The efficacy of the contracts or accounts, or both, in the recruitment and retention of faculty and administrators;

(e) The ability and experience of the designated companies in providing those suitable rights and benefits under those contracts or accounts, or both; and

(f) The ability and experience of the designated companies to provide both suitable participant investment guidance and investment options.

The companies shall act in a fiduciary capacity in selecting investment products that are suitable for the optional retirement program. It shall be the duty of the companies to report to and seek approval from the board for the investment products made available under this paragraph and to report the participant use of those options annually. The board reserves the right to refuse or discontinue any product offered by those companies.

HISTORY:
Laws, 1990, ch. 458, § 4; Laws, 2005, ch. 322, § 2, eff from and after July 1, 2005.

§ 25-11-409. Election to participate in program; time of election.

Eligible employees initially employed on or after July 1, 1990, shall elect to participate in the optional retirement program within thirty (30) days after

(i) entry into state service, or (ii) the effective date of the optional retirement program, whichever is later. The election must be made in writing and filed with the board of trustees and will be effective as of the date of employment. If an eligible employee fails to timely make the election provided in this section, he shall become a member of the Public Employees' Retirement System of Mississippi in accordance with Article 3 of this chapter.

HISTORY:

Laws, 1990, ch. 458, § 5; Laws, 1999, ch. 544, § 8, eff from and after July 1, 1999.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference at the end of this section was corrected by substituting "...Article 3 of this chapter" for "...Article 3 of Chapter 11 of Title 25, Mississippi Code of 1972."

§ 25-11-411. Contributions made by reduction in salary; contributions by employer; amount; accrued liability contribution fund.

Each participant shall contribute monthly to the optional retirement program the same amount that he or she would be required to contribute to the Public Employees' Retirement System of Mississippi if he or she were a member of that retirement system. Participant contributions may be made by a reduction in salary in accordance with the provisions of Section 403(b) of the United States Internal Revenue Code or any amendment thereto, or in accordance with Section 25-11-124, as may be appropriate under the determination made in accordance with Section 25-11-421. The entirety of each participant's contribution shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both. Each employer of a participant in the optional retirement program shall contribute on behalf of each participant in the optional retirement program the same amount the employer would be required to contribute to the Public Employees' Retirement System of Mississippi if the participant were a member of the retirement system. The employer's contribution shall be remitted as follows:

(a) An amount equal to seven and one-fourth percent (7-¼%) of the participant's total earned compensation as defined in Section 25-11-103 shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both;

(b) An amount equal to two and one-half percent (2-½%) of the participant's total earned compensation as defined in Section 25-11-103 shall be remitted to the Public Employees' Retirement System of Mississippi for application to the accrued liability contribution fund;

(c) The remainder, if any, shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both.

If the employer's contribution level is decreased below nine and three-fourths percent (9-¾%) of the employee's total earned compensation, the remittance provided by paragraph (b) of this section shall be reduced accordingly. There shall be no reduction in the remittance provided by paragraph (a) of this section until such time, if any, that the employer's contribution level is less than seven and one-fourth percent (7-¼%) of the participant's total earned compensation. If the accrued liability contribution is reduced or discontinued under Section 25-11-123, the amount of the reduction, or the entirety of the employer's contribution, in case of discontinuance, shall be remitted to the appropriate company or companies for application to the participant's contracts or accounts, or both. Any remittance required to be made by the employer to the Public Employees' Retirement System of Mississippi shall be made at the times the employer remits contributions for members of the retirement system.

HISTORY:

Laws, 1990, ch. 458, § 6; Laws, 1992, ch. 576, § 12; Laws, 1999, ch. 544, § 16; Laws, 2005, ch. 322, § 3, eff from and after July 1, 2005.

Federal Aspects—

Taxation of beneficiary of annuity purchased by public school, see 26 USCS § 403(b).

§ 25-11-413. Ineligibility for membership in Public Employees' Retirement System.

Any person electing to participate in the optional retirement program shall be ineligible for membership in the Public Employees' Retirement System of Mississippi so long as he is employed in a position for which the optional retirement program is available. If an optional retirement program participant assumes a position in state service other than as an employee of a state institution of higher learning, he must at that time begin membership in the Public Employees' Retirement System of Mississippi in accordance with Article 3 of this chapter.

HISTORY:

Laws, 1990, ch. 458, § 7, eff from and after passage (approved March 24, 1990).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference at the end of this section was corrected by substituting "...Article 3 of this chapter" for "...Article 3 of Chapter 11 of Title 25, Mississippi Code of 1972."

§ 25-11-415. Deductions from employers' contribution to administer program; expense fund.

The Public Employees' Retirement System of Mississippi may deduct not more than two percent (2%) of all employers' contributions and transfer such deductions to the expense fund of the Public Employees' Retirement System to defray the cost of administering the optional retirement program created by this article.

HISTORY:

Laws, 1990, ch. 458, § 8; Laws, 2010, ch. 528, § 12, eff from and after July 1, 2010.

§ 25-11-417. Benefits payable not obligations of state but of designated companies.

Benefits payable to participants under the optional retirement program are not obligations of the State of Mississippi. Those benefits and other rights of optional retirement program participants or their beneficiaries are the liability and responsibility solely of the designated company or companies. The benefits of participants whose funds are invested with annuity providers shall be governed solely by the terms of the contracts issued by that company or companies. The benefits of participants whose funds are invested in mutual funds or other similar investment products shall be limited to the value of the account.

HISTORY:

Laws, 1990, ch. 458, § 9; Laws, 2005, ch. 322, § 4, eff from and after July 1, 2005.

§ 25-11-419. Exemption from state or municipal tax; exemption from levy, garnishment, attachment, or other process; application of State Life and Health Insurance Guaranty Association Act.

Annuity contracts, mutual fund accounts or similar investment products authorized under the optional retirement program and all rights thereto of a participant in the optional retirement program shall be exempt from any state or municipal tax (except to the extent that state income tax is payable under Chapter 7, Title 27, Mississippi Code of 1972), shall be exempt from any levy and sale, garnishment, attachment, or any process whatsoever, and shall be unassignable except as specifically otherwise provided in the contract or account. Annuity contracts issued under the optional retirement program shall be treated under the State Life and Health Insurance Guaranty Association Act in the same manner as contracts qualified under Section 403(b) of the Internal Revenue Code.

HISTORY:

Laws, 1990, ch. 458, § 10; Laws, 2005, ch. 322, § 5, eff from and after July 1, 2005.

Federal Aspects—

Taxation of beneficiary of annuity purchased by public school, see 26 USCS § 403(b).

§ 25-11-421. Qualification under Section 401(a) or conformity with section 403(b) of Internal Revenue Code; determination letter from Internal Revenue Service.

The Board of Trustees of the Public Employees' Retirement System shall determine whether the optional retirement program shall be operated in conformity with Section 403(b) of the Internal Revenue Code or be qualified under Section 401(a) of the Internal Revenue Code (or any successor section). If the optional retirement program is to be qualified, the board of trustees shall file for a determination letter from the Internal Revenue Service as soon as practicable, and not later than ninety (90) days, after this article has been approved by the Governor or has been approved by the Legislature subsequent to veto, and the continuance of the optional retirement program shall be subject to a favorable determination letter issued by the Internal Revenue Service.

HISTORY:

Laws, 1990, ch. 458, § 11, eff from and after passage (approved March 24, 1990).

Federal Aspects—

Requirements for qualification of pension under Internal Revenue Code, see 26 USCS § 401(a).

Taxation of beneficiary of annuity purchased by public school, see 26 USCS § 403(b).

§ 25-11-423. Actuarial study; report of study.

After a period of three (3) years has elapsed from March 24, 1990, and not later than December 1, 1993, the Board of Trustees of the Public Employees' Retirement System shall have an actuarial study conducted to determine what effect the optional retirement system created by this article has had on the Public Employees' Retirement System. The results of such study shall be reported to the next regular session of the Legislature convening after completion of the study.

HISTORY:

Laws, 1990, ch. 458, § 12, eff from and after passage (approved March 24, 1990).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error near the beginning of the section was corrected by substituting "…March 24, 1990…" for "…the effective date of this article…"

CHAPTER 13.

HIGHWAY SAFETY PATROL RETIREMENT SYSTEM

Sec.

25-13-1. Purpose of system.
25-13-3. Eligibility for service retirement benefits.
25-13-5. Creditable service.
25-13-7. Custodian of fund; financing; payment of benefits; maintenance as separate fund.
25-13-8. Employer to pay member contributions required for fund; tax treatment; methods of payment.
25-13-9. Disability retirement.
25-13-11. Retirement allowance; superannuation retirement; annual increase; minimum retirement allowances; waiver of benefits.
25-13-11.1. Payment of retirement benefits by the most appropriate means as determined by the board.
25-13-12. Additional benefit payments.
25-13-13. Death benefits.
25-13-14. One-time early retirement for members with twenty years of service.
25-13-15. Repealed.
25-13-16. Retirement benefit options; definitions.
25-13-17. Credit for prior time served in highway safety patrol, armed forces.
25-13-19. Transfer of state retirement annuity fund contributions.
25-13-21. Refund of contributions; rollover distribution to retirement plan or account; repayment of refund upon subsequent reentry into service.
25-13-21.1. Persons to whom benefits payable in event of death of designated beneficiary.
25-13-22. Retirement system authorized to accept eligible rollover distributions to repay fund or for purchase of optional service credit.
25-13-23. Non-covered employees.
25-13-25. Administrative board.
25-13-27. Cost of administering fund; maintenance and disclosure of records.
25-13-28. Interest on employee reserve account.
25-13-29. Actuarial valuation.
25-13-31. Exemption of benefits from taxation, legal execution, and assignment; deductions from retirement allowances for payment of employer or system sponsored group life or health insurance.
25-13-33. Guaranty; vested rights to benefits; maximum annual retirement allowance.
25-13-35. Repealed.

§ 25-13-1. Purpose of system.

There is hereby established a retirement system for the Mississippi Highway Safety Patrol, as defined in this chapter, effective July 1, 1958, under which members of the Mississippi Highway Safety Patrol may retire for superannuation or may retire for reason of disability, and providing benefits to widows and orphans of such patrolmen. This retirement system is designed to supplement and is in addition to the provisions of Sections 25-11-1 through 25-11-21. Under the terms of this chapter, the highway safety patrolmen, as defined herein, retain all the benefits of old age and survivors insurance under the federal laws administered by the department of public health, education and welfare, or its successor, as provided in the federal and state agreement executed on July 2, 1952, but shall not be eligible for benefits under Sections 25-11-101 through 25-11-139, which is the state retirement annuity plan for state employees. This chapter is a substitute for and in lieu of said sections, and is designed to provide more liberal benefits for the highway safety patrolmen by reason of the dangerous nature of their employment.

HISTORY:

Codes, 1942, § 8090-51; Laws, 1958, ch. 543, § 1.

Cross References —

Social security benefits of state employees, see §§ 25-11-3 et seq.

Public employees' retirement system, generally, see §§ 25-11-101 et seq.

Transfer of law enforcement officers' disability and retirement funds from one jurisdiction to another, see § 25-11-137.

Maintenance of reserves, vesting of rights, and maximum annual retirement allowance under the highway safety patrol retirement system, see § 25-13-33.

Highway Safety Patrol and Driver's License Law of 1938, see §§ 45-3-1 et seq., 63-1-1 et seq.

RESEARCH REFERENCES

Am. Jur.

60 Am. Jur. 2d, Pensions and Retirement Funds § 1618.

§ 25-13-3. Eligibility for service retirement benefits.

As used in this chapter, unless the context clearly indicates otherwise, the term "Highway Patrol or Highway Safety Patrol" for the purpose of establishing membership in this system for persons presently employed by the Highway Safety Patrol shall mean and include all the officers of the Mississippi Highway Safety Patrol who have completed a course of instruction in an authorized highway patrol training school on general law enforcement, and who have served for a period of at least five (5) years prior to July 1, 1958, as a uniformed officer of the Highway Safety Patrol in the enforcement of the traffic laws of the State of Mississippi, or in the driver's license division, or who are now engaged in such service. New members shall include all the officers of the Mississippi Highway Safety Patrol who have completed a course of instruction in an authorized highway patrol training school on general law enforcement, and who serve as sworn officers of the Highway Patrol in the enforcement of the laws of the State of Mississippi.

Any former sworn officer of the Highway Safety Patrol who returns to service with the Highway Safety Patrol in any capacity, and who has had not less than two (2) years of prior service as a sworn officer of the Highway Safety Patrol, and who was disabled by wounds or accident in line of duty, may become a member of the Highway Safety Patrol Retirement System even though his present duties would not otherwise qualify him for membership, and he may continue membership so long as he remains in the employ of the Highway Safety Patrol.

Membership in the Highway Safety Patrol Retirement System shall be retroactive to the date of such patrolman's return to employment with the Highway Safety Patrol, and any funds contributed by him, previous to July 1, 1958, to the Public Employees' Retirement System shall be transferred to his credit in the Highway Safety Patrol Retirement System, and the employer's contributions made to the Public Employees' Retirement System for the patrolman shall also be transferred to the employer's credit in the Highway Safety Patrol Retirement System; and the difference between the contributions for both the employer and the employee made to the Public Employees' Retirement System, and those which should have been made to the Highway

Safety Patrol Retirement System by both employer and employee for the patrolman since the date of his return to the Highway Safety Patrol shall be paid into the Highway Safety Patrol Retirement System.

In order to be eligible for service retirement benefits under this retirement system any member must have served at least five (5) years as a sworn officer of the Highway Patrol engaged in the enforcement of the laws of the State of Mississippi, or at least five (5) years as a sworn agent of the Mississippi Bureau of Narcotics, or a combination of at least five (5) years as a sworn agent of the Mississippi Bureau of Narcotics and as a sworn officer of the Highway Patrol. If the officer is transferred from duty making him eligible for membership in this retirement system to other duties for which credit is not allowed by this system, and he has not been credited with a minimum of five (5) years in this system as a sworn officer of the Highway Patrol engaged in the enforcement of the laws of this state, then an amount as determined by the Public Employees' Retirement System shall be transferred from this system to his account in the Public Employees' Retirement System of Mississippi to make him a member of that system with full credit for his years of service with the Mississippi Highway Safety Patrol, and he shall become a member of the Public Employees' Retirement System of Mississippi with prior service credits. The amount that is determined to be necessary to be transferred shall be paid first from the member's total contributions in the Highway Safety Patrol System, plus interest, so that all of those funds are transferred, and any remainder shall be paid from the employer's accumulation account.

HISTORY:

Codes, 1942, § 8090-52; Laws, 1958, ch. 543, § 2; Laws, 1962, ch. 581, § 1; Laws, 1991, ch. 468 § 4; Laws, 2010, ch. 528, § 8, eff from and after July 1, 2010.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in the first sentence of the first paragraph and the first sentence of the third paragraph were corrected by substituting "...July 1, 1958..." for "...the passage of this chapter..."

Cross References —

Highway Safety Patrol and Driver's License Law of 1938, see §§ 45-3-1 et seq., 63-1-1 et seq.

§ 25-13-5. Creditable service.

Creditable service on which a member's service or disability retirement benefit is based shall consist of "prior service" and membership service. Prior service shall mean service performed for the Highway Safety Patrol as defined in Section 25-13-3 before July 1, 1958 and service performed as a sworn agent for the Mississippi Bureau of Narcotics prior to March 29, 1991. No prior service credits shall be granted any person who re-enters the employment of the Highway Safety Patrol after July 1, 1958, except that any former sworn officer of the Highway Safety Patrol who returns to the Highway Safety Patrol in any capacity, and who has had not less than two (2) years of prior service as a sworn officer of the Highway Safety Patrol, and who was disabled by wounds or accident in line of duty, may become a member of the Highway Safety Patrol Retirement System with full credit for any previous service as set forth in Section 25-13-3 with the Highway Safety Patrol. Membership service shall mean all services for which credit may be allowed under this chapter subsequent to July 1, 1958, and all lawfully credited unused leave as of the date of withdrawal from service, as certified by the appointing authority.

HISTORY:

Codes, 1942, § 8090-53; Laws, 1958, ch. 543, § 3; Laws, 1962, ch. 581, § 2; Laws, 1984, ch. 307, § 7; Laws, 1991, ch. 468 § 5, eff from and after passage (approved March 29, 1991).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative committee on Compilation, Revision and Publication of Legislation clarified effective dates listed in this section. The words "before the chapter becomes effective" were changed to "before July 1, 1958." The words "prior to the effective date of this act" were changed to "prior to March 29, 1991." And the words "after the effective date of this chapter" were changed to "after July 1, 1958." The Joint committee ratified these corrections at its may 16, 2002, meeting.

Cross References —

Receiving credit for retirement purposes for unused personal leave, see §§ 25-3-93 and 25-3-95.

§ 25-13-7. Custodian of fund; financing; payment of benefits; maintenance as separate fund.

The Board of Trustees of the Public Employees' Retirement System, as created by Sections 25-11-1 through 25-11-139, shall act as custodian of this Disability and Relief Fund for members of the Mississippi Highway Safety Patrol; shall receive to the credit of such fund all appropriations and other funds available as an employer's contribution thereto from any source whatsoever; and the Highway Safety Patrol shall each month deduct from the salary of each member, as defined in Section 25-13-3, five percent (5%) thereof, and shall pay the amount so deducted to the Board of Trustees of the Public Employees' Retirement System to be credited to the Disability and Relief Fund for the members of the Mississippi Highway Safety Patrol. Provided, however, that the said board of trustees may, biennially, following March 18, 1977, vary the percentage of employee contribution on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by actuarial valuation. From the funds credited to this account, the Board of Trustees of the Public Employees' Retirement System shall pay retirements, disability benefits, survivors benefits, expenses and shall refund contributions as provided in this chapter. The said "Disability and Relief Fund for the Mississippi Highway Safety Patrol" shall be maintained as a separate fund, separate from all other funds held by the Board of Trustees of the Public Employees' Retirement System of Mississippi and shall be used only for the payment of benefits provided for by this chapter, or amendments thereto.

HISTORY:

Codes, 1942, § 8090-54; Laws, 1958, ch. 543, § 4; Laws, 1977, ch. 373; Laws, 2001, ch. 438, § 4, eff from and after July 1, 2001.

Cross References —

Administration of provisions of social security act, see § 25-11-15.

§ 25-13-8. Employer to pay member contributions required for fund; tax treatment; methods of payment.

The employer shall pick up the member contributions required by Section

25-13-7, Mississippi Code of 1972, for all compensation earned after June 30, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and Mississippi Income Tax Code; however, the employer shall continue to withhold federal and state income taxes based upon these contributions until the internal revenue service or federal courts rule that pursuant to section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer may pick up these contributions by a reduction in the cash salary of the member or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase. If member contributions are picked up they shall be treated for all purposes of the Mississippi Highway Safety Patrol Retirement System in the same manner and to the same extent as member contributions made prior to the date picked up.

HISTORY:

Laws, 1982, ch. 381, eff from and after July 1, 1982.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the end of the section by substituting "...shall be treated for all purposes of the Mississippi Highway Safety Patrol Retirement System in the same manner..." for "...shall be treated for all purposes of Article 3 in the same manner..." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Cross References —

Similar provision with respect to member contributions to the public employees' retirement system, see § 25-11-124.

§ 25-13-9. Disability retirement.

(1) Upon application of a member or his employer, but in no event before termination of state service, any member who has not attained the age of fifty-five (55) years may be retired by the administrative board created by this chapter, not less than thirty (30) and not more than ninety (90) days next following the date of filing the application, on a disability retirement allowance, provided that the Medical Board of the Public Employees' Retirement System of Mississippi, after an evaluation of medical evidence, which may include a physical examination by the medical board, certifies that he is mentally or physically incapacitated for the performance of duty, that the incapacity is likely to be permanent, and that the sickness or injury was caused or sustained as a direct result of duty in the Highway Safety Patrol after July 1, 1958.

Any former uniformed highway safety patrolman who has had not less than two (2) years of prior service with the Highway Safety Patrol and who was disabled by wounds or accident in line of duty, and who has returned to duty with the Highway Safety Patrol, and who becomes a member of the Highway Safety Patrol Retirement System with prior years' service credits as provided in this chapter, may, if his disability from his previous wounds or accident received in line of duty returns and he again becomes totally and permanently disabled, receive full benefits as a disability retirant for service-connected disability.

Upon the application of a member or his employer, any member who is not yet eligible for service retirement benefits and who has had at least five (5) years of creditable service may be retired by the administrative board, not less than thirty (30) and not more than ninety (90) days next following the date of filing the application, on disability retirement allowance, provided that the Medical Board of the Public Employees' Retirement System of Mississippi, after an evaluation of medical evidence, which may include a physical examination by the medical board, certifies that he is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that he should be retired. This disability need not be service-connected.

(2) Upon retirement for disability, a member shall receive a disability benefit equal to fifty percent (50%) of his average salary for the two (2) years immediately preceding his retirement, but not less than any retirement benefits for which he may be eligible at the date he is granted disability.

(3) Once each year during the first five (5) years following retirement of a member on a disability retirement allowance, and once in every period of three (3) years thereafter, the administrative board may, and upon his application shall, require any disability beneficiary who has not yet attained the age of fifty-five (55) years to undergo a medical examination, the examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by the Medical Board of the Public Employees' Retirement System. If any disability beneficiary who has not yet attained the age of fifty-five (55) years refuses to submit to any medical examination provided for in this subsection, his allowance may be discontinued until his withdrawal of that refusal, and if his refusal continues for one (1) year, all his rights in that part of the disability benefit provided by employer contributions shall be revoked by the administrative board.

(4) If the medical board reports and certifies to the administrative board that the disability beneficiary is engaged in, or is able to engage in, a gainful occupation paying more than the difference between his disability benefit and the average compensation, and if the administrative board concurs in that report, the disability benefit shall be reduced to an amount that, together with the amount earnable by him, equals the amount of his average compensation. If his earning capacity is later changed, the amount of the benefit may be further modified; however, the revised benefit shall not exceed the amount originally granted or an amount that, when added to the amount earnable by the beneficiary, equals the amount of his average compensation.

(5) If a disability beneficiary under the age of fifty-five (55) years is restored to active service at a compensation not less than his average compensation, his disability benefit shall cease; he shall again become a member of the retirement system, and he shall contribute thereafter at the same rate he paid before disability. Any such prior service certificate on the

basis of which his service was computed at the time of retirement shall be restored to full force and effect. In addition, upon his subsequent retirement he shall be credited with all creditable service as a member, including the period for which he was paid disability benefits.

HISTORY:
Codes, 1942, § 8090-55; Laws, 1958, ch. 543, § 5; Laws, 1962, ch. 581, § 3; Laws, 1966, ch. 620, § 1; Laws, 1980, ch. 470, § 1; Laws, 2001, ch. 438, § 5; Laws, 2002, ch. 302, § 1, eff from and after passage (approved Feb. 22, 2002).

Cross References —
Administration of state retirement and disability benefits, see § 25-11-119.

Establishment of administrative board to enact regulations necessary to operation of highway safety patrol retirement system, see § 25-13-25.

Retirants under this section being allowed to retain one sidearm, see § 45-3-51.

§ 25-13-11. Retirement allowance; superannuation retirement; annual increase; minimum retirement allowances; waiver of benefits.

(1) Any member upon withdrawal from service, upon or after attainment of the age of fifty-five (55) years, who has completed at least five (5) years of creditable service, or any member upon withdrawal from service upon or after attainment of the age of forty-five (45) years, who has completed at least twenty (20) years of creditable service, or any member upon withdrawal from service, regardless of age, who has completed at least twenty-five (25) years of creditable service, shall be entitled to receive a retirement allowance, which shall be payable the first of the month following receipt of the member's application in the Office of the Executive Director of the Public Employees' Retirement System, but in no event before withdrawal from service.

Any member whose withdrawal from service occurs before attaining the age of fifty-five (55) years, who has completed more than five (5) years of creditable service and has not received a refund of the member's accumulated contributions, shall be entitled to receive a retirement allowance beginning upon his attaining the age of fifty-five (55) years of the amount earned and accrued at the date of withdrawal from service.

The annual amount of the retirement allowance shall consist of:

(a) A member's annuity, which shall be the actuarial equivalent of the accumulated contributions of the member at the time of retirement, computed according to the actuarial table in use by the system.

(b) An employer's annuity which, together with the member's annuity provided above, shall be equal to two and one-half percent (2-½%) of the average compensation, based on the four (4) highest consecutive years, for each year of membership service.

(c) A prior service annuity equal to two and one-half percent (2-½%) of the average compensation, based on the four (4) highest consecutive years, for each year of prior service for which the member is allowed credit.

(d) In the case of retirement of any member prior to attaining the age of fifty-five (55) years, the retirement allowance shall be computed in accordance with the formula hereinabove set forth in this section, except that the employer's annuity and prior service annuity above described shall be reduced by an actuarially determined percentage factor for each year of age below fifty-five (55) years, or for each year of service below twenty-five (25) years of creditable service, whichever is lesser.

(e) Upon retiring from service, a member shall be eligible to obtain retirement benefits, as computed above, for life, except that the aggregate amount of the employer's annuity and prior service annuity above described shall not exceed more than one hundred percent (100%) of the average compensation regardless of the years of service.

(f) Any member in the service who has attained the age of sixty-three (63) years shall be retired immediately. However, any member who has attained age sixty-three (63) may ask the Commissioner of Public Safety to allow him to continue in service with the Mississippi Highway Safety Patrol beyond age sixty-three (63). If the commissioner determines that the member's continuance in service would be advantageous to the Highway Safety Patrol because of his expert knowledge, experience or qualifications, the member shall be allowed to continue in service beyond age sixty-three (63) for a period of one (1) year. After the initial one-year continuance, the commissioner may authorize the member to continue in service for another period of one (1) year until the member attains age sixty-five (65), at which time retirement shall be mandatory.

(g) Notwithstanding any provision of this chapter pertaining to the Mississippi Highway Safety Patrol Retirement System, no payments may be made for a retirement allowance on a monthly basis for a period of time in excess of that allowed by any applicable federal law.

(h) In no case shall any retired member who has completed at least fifteen (15) years of creditable service receive less than Five Hundred Dollars ($500.00) per month; in no case shall any retired member who has completed ten (10) or more years of creditable service, but less than fifteen (15) years of creditable service, receive less than Three Hundred Dollars ($300.00) per month; and in no case shall any retired member who has completed less than ten (10) years of creditable service receive less than Two Hundred Fifty Dollars ($250.00) per month. In no case shall a beneficiary who is receiving a retirement allowance receive less than Two Hundred Fifty Dollars ($250.00) per month or Three Thousand Dollars ($3,000.00) per year.

(i) Any retired member who is receiving a retirement allowance on July 1, 1999, shall receive an ad hoc increase in the annual retirement allowance equal to Three Dollars and Fifty Cents ($3.50) per month for each full fiscal year through June 30, 1999, that the member has actually drawn retirement payments from the date of retirement, or the date of last retirement if there is more than one (1) retirement date, plus an amount equal to One Dollar ($1.00) per month for each full year of creditable service and proportionately for each quarter year of creditable service, as documented by the system and on which benefits are being paid. If there are multiple beneficiaries receiving a retirement allowance from a deceased member's account, the ad hoc increase shall be divided proportionately.

(2)(a) A retiree or beneficiary may, on a form prescribed by and filed with the Executive Director of the Public Employees' Retirement System, irrevocably waive all or a portion of any benefits from the plan to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the Highway Safety Patrol Retirement System and the Public Employees' Retirement System from any claim to the waived retirement benefits.

(b) Any waiver under this subsection shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement; however, a beneficiary may execute a waiver of benefits under this subsection.

(c) The Highway Safety Patrol Retirement System shall retain all amounts that are not used to pay benefits because of a waiver executed under this subsection.

(d) The Board of Trustees of the Public Employees' Retirement System may provide rules and regulations for the administration of waivers under this subsection.

HISTORY:

Codes, 1942, § 8090-56; Laws, 1958, ch. 543, § 6; Laws, 1966, ch. 620, § 2; Laws, 1980, ch. 470, § 2; Laws, 1986, ch. 396, § 1; Laws, 1990, ch. 472, § 1; Laws, 1991, ch. 513, § 10; Laws, 1999, ch. 543, § 1; Laws, 2000, ch. 305, § 1; Laws, 2010, ch. 528, § 9; Laws, 2011, ch. 393, § 1; Laws, 2016, ch. 397, § 17, eff from and after July 1, 2016.

Cross References —

Election to receive benefits pursuant to provisions of this section, Section 25-13-13 or Section 25-13-16, see § 25-13-16.

Retirants under this section being allowed to retain one sidearm, see § 45-3-51.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Equitable review denied.

1. Constitutionality.

The 85% statutory limitation on retirement benefits is rationally related to the legitimate legislative purpose of fiscal planning and, therefore, is not unconstitutional. Moody v. Mississippi Dep't of Pub. Safety/Highway Patrol, 729 So. 2d 1249, 1999 Miss. LEXIS 13 (Miss. 1999).

2. Equitable review denied.

Issue on appeal was whether the officers were entitled to equitable review of their claims relating to compensation and retirement benefits, which were excluded from state service grievance procedure. However, the Mississippi Supreme Court had already found that Miss. Code Ann. § 25-13-11(e) (Rev. 2003) was constitutional after an appeal by one of said officers; as such, the officers' grievances (in a subsequent combined action), were barred by the traditional notions of res judicata, collateral estoppel, and/or for failure to exhaust all administrative remedies and the trial court properly granted the Mississippi Department of Public Safety's Miss. R. Civ. P. 12(b)(6) motion to dismiss. Farmer v. State Dep't of Pub. Safety, 907 So. 2d 981, 2005 Miss. App. LEXIS 156 (Miss. Ct. App.), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 461 (Miss. 2005).

OPINIONS OF THE ATTORNEY GENERAL

Limitation in statute on retirement benefits applies prospectively to new members and to active members whose creditable service as of July 1, 1986 made them eligible for service retirement benefit not exceeding 85% of average compensation; for active members whose creditable service as of July 1, 1986 made them eligible for service retirement benefit in excess of 85% of average compensation, amendment limits aggregate benefit payable to such members for service retirement to percentage calculated on basis of actual creditable service accrued as of effective date of amendment. 1994 Miss. Op. Att'y Gen. 43.

The mandatory retirement of highway safety patrol members under Miss. Code Section 25-13-11(f) at age sixty may be enforced without violating the Age Discrimination in Employment Act provisions relating to firefighters and law enforcement personnel (29 U.S.C.S. § 5623(j)). 1997 Miss. Op. Att'y Gen. 514.

§ 25-13-11.1. Payment of retirement benefits by the most appropriate means as determined by the board.

The Public Employees' Retirement System shall make payments of retirement benefits under this chapter to members and to the beneficiaries of those members, by whatever means the board prescribes by regulation to be the most appropriate for the proper and efficient payment of benefits, including, but not limited to, direct deposit to an account with a financial institution that is a participant of the Automated Clearing House designated by the member or beneficiary. The board may provide for alternative means of payment if the member or beneficiary can demonstrate that payment by the prescribed means will cause the member or beneficiary undue hardship.

HISTORY:

Laws, 2002, ch. 627, § 3; Laws, 2016, ch. 397, § 8, eff from and after July 1, 2016.

§ 25-13-12. Additional benefit payments.

(1) Any member who is receiving a retirement allowance for service or disability retirement, or any beneficiary thereof, who has received a monthly benefit for at least one (1) full fiscal year, shall be eligible to receive an additional benefit, on December 1 or July 1 of the year as provided in subsection (6) or (7) of this section, equal to the sum of:

(a) An amount equal to three percent (3%) of the annual retirement allowance multiplied by the number of full fiscal years in retirement before the end of the fiscal year in which the member reaches age sixty (60) or the age established in the latest phase that has been implemented under subsection (3) of this section, plus

(b) An additional amount equal to three percent (3%) compounded by the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60) or the age established in the latest phase that has been implemented under subsection (3) of this section, multiplied by the amount of the annual retirement allowance.

(2) The calculation of the beneficiary's additional benefit provided in this section shall be based on the member's age and full fiscal years in retirement as if the member had lived.

(3) From and after July 1, 2003, the board shall begin implementing a reduction in the age at which compounding of the portion of the additional benefit provided in subsection (1) (b) of this section will begin, which changes shall be implemented in phases as set forth in the table in this subsection. The

board shall implement the phases systematically upon July 1 after the board's actuary certifies that implementation of a phase will not cause the unfunded accrued actuarial liability amortization period for the retirement system to exceed twenty (20) years. The board shall have the exclusive authority to set the assumptions that are used in the actuarial valuation in accordance with Section 25-13-29.

IMPLEMENTATION TABLE FOR AGE OF COMPOUNDING THE ADDITIONAL BENEFIT

PHASE	AGE AT WHICH COMPOUNDING THE ADDITIONAL BENEFIT BEGINS
Phase 1	Age 59
Phase 2	Age 58
Phase 3	Age 57
Phase 4	Age 56
Phase 5	Age 55

(4) If a retiree who is receiving a retirement allowance that will terminate upon the retiree's death is receiving the additional benefit in one (1) payment and dies on or after July 1 but before December 1, the beneficiary designated on the retirement application, if any, shall receive in a single payment a fractional part of the additional benefit based on the number of months in which a retirement allowance was received during the fiscal year. If there is no surviving beneficiary, payment shall be made in accordance with Section 25-13-21.1(1). Likewise, if a retiree is receiving a retirement allowance that will terminate upon the retiree's death in two (2) to six (6) monthly installments, any remaining payments of the additional benefit will be paid in a lump sum to the beneficiary designated on the application, or if none, in accordance with Section 25-13-21.1(1). Any similar remaining payments of the additional benefit payable under this section to a deceased beneficiary who was receiving a monthly benefit shall be payable in accordance with the provisions of Section 25-13-21.1(2). If the additional benefit is being received in one (1) payment each year, the additional benefit shall be prorated based on the number of months in which a retirement allowance was received during the fiscal year when (i) the monthly benefit payable to a beneficiary terminates due to the expiration of an option, remarriage or cessation of dependent status or due to the retiree's return to covered employment, and (ii) the monthly benefit terminates on or after July 1 and before December 1.

(5) Each retired member or beneficiary thereof who receives an annual retirement allowance based on the average compensation for a period of five (5) successive or joined years and who receives a retirement allowance for the month of June 1986, shall receive an ad hoc increase of three percent (3%) in such retirement allowance effective July 1, 1986.

(6) The additional benefit provided in this section shall be paid in one (1) payment in December of each year to those persons who are receiving a

retirement allowance on December 1 of that year, unless an election is made under subsection (7) of this section. The board, in its discretion, may allow a retired member or a beneficiary thereof who is receiving the additional benefit in one (1) payment each year to have the additional benefit paid in monthly installments if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional benefit in one (1) payment each year will cause a financial hardship to the retired member or beneficiary.

(7) Retired members or beneficiaries thereof who are receiving a retirement allowance may elect by an irrevocable agreement in writing filed in the Office of the Public Employees' Retirement System no less than thirty (30) days before July 1 of any year, to begin receiving the additional benefit provided in this section in twelve (12) equal monthly installments beginning on July 1 of the year. This irrevocable agreement shall be binding on the member and subsequent beneficiaries. Payment of those monthly installments shall not extend beyond the month in which a retirement allowance is due and payable. Any retired member or beneficiary thereof who previously elected to receive the additional annual payment in monthly installments may elect, upon application on a form prescribed by the board, to have that payment made in one (1) payment in December of each year. This written election must be filed in the office of the Public Employees' Retirement System before June 1, 2003, and shall be effective for the fiscal year beginning July 1, 2003. The board, in its discretion, may allow a retired member or a beneficiary thereof who is receiving the additional benefit in monthly installments to have the additional benefit paid in one (1) payment in December of each year if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional benefit in monthly installments will cause financial hardship to the retired member or beneficiary.

(8) The additional benefit or benefits provided in this section are for the fiscal year in which they are paid.

(9) The amount of the additional benefit provided in subsection (1) (b) of this section is calculated using the following formula:

$$[(1.03)^n - 1] \times [\text{annual retirement allowance}],$$

where ^{n} is the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60) or the age established in the latest phase that has been implemented under subsection (3) of this section.

(10) In the event of death of a retired member or a beneficiary thereof who is receiving the additional annual payment in two (2) to six (6) monthly installments under an election made before July 1, 2002, and who would otherwise be eligible to receive the additional benefit provided in this section in one (1) payment in December of the current fiscal year, any remaining amounts shall be paid in a lump sum to the designated beneficiary.

(11) When a member retires after July 1 and has previously received a retirement allowance for one or more full fiscal years, the retired member shall

be eligible immediately for the additional benefit. The additional benefit shall be based on the current retirement allowance and the number of full fiscal years in retirement and shall be prorated and paid in monthly installments based on the number of months a retirement allowance is paid during the fiscal year.

HISTORY:

Laws, 1975, ch. 500, § 1; Laws, 1982, ch. 338; Laws, 1985, ch. 410; Laws, 1986, ch. 396, § 2; Laws, 1991, ch. 513, § 11; Laws, 1997, ch. 560, § 1; Laws, 1999, ch. 543, § 2; Laws, 2000, ch. 628, § 16; Laws, 2002, ch. 318, § 1; Laws, 2004, ch. 561, § 8, eff from and after passage (approved May 14, 2004).

Cross References —

Application of the Consumer Price Index of the United States government in determining retirement allowance for public employees generally, see § 25-11-112.

OPINIONS OF THE ATTORNEY GENERAL

Board referred to in Section 25-13-12(2) is Board of Trustees of Public Employees Retirement System. 1993 Miss. Op. Att'y Gen. 782.

An increase in benefits under the 1989 amendment to this section can not be paid retroactively but are to be paid only from the date of the application for such an increase. 1999 Miss. Op. Att'y Gen. 727.

The term "children of an active member" includes natural children and adopted children, including adopted stepchildren, but does not include a stepchild who had not been legally adopted. 1999 Miss. Op. Att'y Gen. 727.

The spouse and/or the dependent children of an active member killed in the line of duty qualifies for a retirement allowance but not before receipt of application by the board; further, each child until he reaches 19 years is entitled to retirement benefits upon application of the widow. 1999 Miss. Op. Att'y Gen. 727.

The calculation of average compensation should be based on the law in effect at the time that the beneficiary applied for benefits and thereby qualified for benefits. 1999 Miss. Op. Att'y Gen. 727.

§ 25-13-13. Death benefits.

(1) Upon the death of any highway patrolman who has retired for service or disability and who has not elected any other option under Section 25-13-16, his or her spouse shall receive one-half (½) the benefit that he or she was receiving and each child not having attained his nineteenth birthday shall receive one-fourth (¼) of the benefit, but not more than one-half (½) of the benefits shall be paid for the support and maintenance of two (2) or more children. Upon each child's attaining the age of nineteen (19) years, the child shall no longer be eligible for the benefit, and when all of the children have attained their nineteenth birthday, only the spouse shall be eligible for one-half (½) the amount of the benefit. The spouse shall continue to be eligible for the benefit in the amount of fifty percent (50%) of his or her retirement benefit so long as the spouse may live. Surviving spouses of deceased members who previously received spouse retirement benefits under this subsection from and after July 1, 1958, and whose benefits were terminated before July 1, 2004, because of remarriage, may again receive the retirement benefits authorized under this subsection by making application with the board to reinstate the benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but no earlier than July 1, 2004.

(2) Upon the death of any highway patrolman who has served the

minimum retirement period required for eligibility for this retirement program, his or her spouse and family shall receive all the benefits payable to the highway patrolman's beneficiaries as if he or she had retired at the time of his or her death. Those benefits continue to be paid to the spouse for life. The benefits are payable on a monthly basis. Surviving spouses of deceased members who previously received spouse retirement benefits under this subsection from and after July 1, 1958, and whose benefits were terminated before July 1, 2004, because of remarriage, may again receive the retirement benefits authorized under this subsection by making application with the board to reinstate the benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but no earlier than July 1, 2004.

(3) The spouse and/or the dependent children of an active member who is killed in the line of performance of duty or dies as a direct result of an accident occurring in the line of performance of duty shall qualify, on approval of the board, for a retirement allowance on the first of the month following the date of death, but not before receipt of application by the board. The spouse shall receive a retirement allowance equal to one-half (½) of the average compensation of the deceased highway patrolman. In addition to the retirement allowance for the spouse, or if there is no surviving spouse, a retirement allowance shall be paid in the amount of one-fourth (¼) of the average compensation for the support and maintenance of one (1) child or in the amount of one-half (½) of the average compensation for the support and maintenance of two (2) or more children. Those benefits shall cease to be paid for the support and maintenance of each child upon the child attaining the age of nineteen (19) years; however, the spouse shall continue to be eligible for the aforesaid retirement allowance. Benefits may be paid to a surviving parent or lawful custodian of the children for the use and benefit of the children without the necessity of appointment as guardian. The retirement allowance shall continue to be paid to the spouse for life. Surviving spouses of deceased members who previously received spouse retirement benefits under this subsection from and after July 1, 1958, and whose benefits were terminated before July 1, 2004, because of remarriage, may again receive the retirement benefits authorized under this subsection by making application with the board to reinstate the benefits. Any reinstatement of the benefits shall be prospective only and shall begin after the first of the month following the date of the application for reinstatement, but no earlier than July 1, 2004.

(4) All benefits accruing to any child under the provisions of this chapter shall be paid to the parent custodian of the children or the legal guardian.

(5) Children receiving the benefits provided in this section who are permanently or totally disabled shall continue to receive the benefits for as long as the medical board or other designated governmental agency certifies that the disability continues. The age limitation for benefits payable to a child under any provision of this section shall be extended beyond age nineteen (19), but in no event beyond the attainment of age twenty-three (23), as long as the child is a student regularly pursuing a full-time course of resident study or

training in an accredited high school, trade school, technical or vocational institute, junior or community college, college, university or comparable recognized educational institution duly licensed by a state. A student child who is receiving a retirement allowance as of June 30, 2016, whose birthday falls during the school year (September 1 through June 30) is considered not to reach age twenty-three (23) until the July 1 following the actual twenty-third birthday. A full-time course of resident study or training means a day or evening noncorrespondence course that includes school attendance at the rate of at least thirty-six (36) weeks per academic year or other applicable period with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

(6) If all the annuities provided for in this section payable on the account of the death of a member terminate before there has been paid an aggregate amount equal to the member's accumulated contributions standing to the member's credit in the annuity savings account at the time of the member's death, the difference between the accumulated contributions and the aggregate amount of annuity payments shall be paid to the person as the member has nominated by written designation duly executed and filed with the board of trustees in the office of the Public Employees' Retirement System. If there is no designated beneficiary surviving at termination of benefits, the difference shall be payable pursuant to Section 25-13-21.1(1).

(7) All benefits paid to a spouse or child due to the death of a member before or after retirement shall be paid in accordance with the statutory provisions set forth as of the date of death.

HISTORY:

Codes, 1942, § 8090-57; Laws, 1958, ch. 543, § 7; Laws, 1966, ch. 620, § 3; Laws, 1975, ch. 500, § 3; Laws, 1976, ch. 422; Laws, 1986, ch. 396, § 3; Laws, 1989, ch. 399, § 1; Laws, 1990, ch. 472, § 3; Laws, 1991, ch. 513, § 12; Laws, 1992, ch. 576, § 11; Laws, 1999, ch. 544, § 9; Laws, 2000, ch. 628, § 17; Laws, 2004, ch. 561, § 9; Laws, 2016, ch. 397, § 12, eff from and after July 1, 2016.

Cross References —

State highway patrol disability and relief fund, see § 25-13-7.

Election to receive benefits pursuant to provisions of this section, Section 25-13-11 or Section 25-13-16, see § 25-13-16.

JUDICIAL DECISIONS

1. Definition of children for benefit purposes.

Although statute limited payment of benefits to dependent children of an officer killed in the line of duty and "children" was undefined by the highway patrol retirement system, the Public Employees' Retirement System, defined "child" as including a child under the permanent care of the member at the time of his death; therefore, where patrolman took care of stepchildren and was in the process of adopting them at the time of his death, they were entitled to collect benefits. Pub. Emples. Ret. Sys. v. Langham, 812 So. 2d 969, 2002 Miss. LEXIS 129 (Miss. 2002).

OPINIONS OF THE ATTORNEY GENERAL

Upon application and approval by the board, the spouse of a highway patrolman killed in the line of duty in 1981 is entitled to the increased retirement allowance provided for by the amendment of this section in 1989 if she has not remarried. 1997 Miss. Op. Att'y Gen. 466.

§ 25-13-14. One-time early retirement for members with twenty years of service.

(1) There is hereby created a one-time early retirement for any member of the Mississippi Highway Safety Patrol Retirement System who has at least twenty (20) years' of service. A superannuation retirement taken under the provisions of this section shall not be subject to the three percent (3%) penalty for a member who is below the age of fifty-five (55) years as provided in Section 25-13-11(d), Mississippi Code of 1972. A retirement under the provisions of this section shall be based upon the current fiscal year's salary of the applicant.

No member of the Mississippi Highway Safety Patrol Retirement System may avail himself of the benefits provided in this section from and after June 30, 1986.

(2) This section shall stand repealed from and after June 30, 1986; however, future funding for those members who retire under the provisions of this section shall be provided from surplus funds of the Mississippi Highway Safety Patrol Retirement System as deposited therein pursuant to the provisions of Section 63-1-46, Mississippi Code of 1972.

HISTORY:

Laws, 1986, ch. 500, § 4, eff from and after passage (approved April 18, 1986).

RESEARCH REFERENCES

Am. Jur.

60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1603 et seq.

§ 25-13-15. Repealed.

Repealed by Laws, 1979, ch. 415, § 2, eff from and after July 1, 1979. [Codes, 1942, § 8090-58; Laws, 1958, ch. 543, § 8]

Editor's Notes —

Former § 25-13-15 provided for pro-rata payments in the event of insufficient funds.

§ 25-13-16. Retirement benefit options; definitions.

(1) Upon application for superannuation or disability retirement, any member who retires after July 1, 1990, may elect to receive his benefit pursuant to the provisions of Sections 25-13-11 and 25-13-13. Or he may elect upon retirement, or upon becoming eligible for retirement, to receive the actuarial equivalent, subject to the provisions of subsection (3) of this section,

of his retirement allowance in a reduced retirement allowance payable throughout life with the provision that:

Option 1. If he dies before he has received in annuity payment the value of the member's annuity savings account as it was at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation duly acknowledged and filed with the board; or

Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of, and paid to, such person as he has nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement;

Option 3. Upon his death, one-half (½) of his reduced retirement allowance shall be continued throughout the life of, and paid to, such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement, and the other one-half (½) of his reduced retirement allowance to some other designated beneficiary;

Option 4. Upon his death, three-fourths (¾) of his reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person he shall have nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement;

Option 4-A. Upon his death, one-half (½) of his reduced retirement allowance, or such other specified amount, shall be continued throughout the life of, and paid to, such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 4-B. A reduced retirement allowance shall be continued throughout the life of the retirant, but with the further guarantee of payments to the named beneficiary or beneficiaries for a specified number of years certain. If the retired member or the last designated beneficiary both die prior to receiving all guaranteed payments due, the actuarial equivalent of the remaining payments shall be paid to the successors of the retired member under Section 25-13-21.1(1);

Option 4-C. Such retirement allowance otherwise payable may be converted into a retirement allowance of equivalent actuarial value in such an amount that, with the member's benefit under Title II of the federal Social Security Act, the member will receive, so far as possible, approximately the same amount annually before and after the earliest age at which the member becomes eligible to receive a social security benefit. This option shall not be available to retirees whose retirement is effective on or after July 1, 2004;

Option 6. Any member who is eligible to retire with an unreduced benefit may select the maximum retirement benefit or an optional benefit as provided in this subsection together with a partial lump-sum distribution. The amount of the lump-sum distribution under this option shall be equal to the maximum monthly benefit multiplied by twelve (12), twenty-four (24) or thirty-six (36) as selected by the member. The maximum retirement benefit shall be actuarially reduced to reflect the amount of the lump-sum distribution selected and further reduced for any other optional benefit selected. The annuity and lump-sum distribution shall be computed to result in no actuarial loss to the system. The lump-sum distribution shall be made as a single payment payable at the time the first monthly annuity payment is paid to the retiree. The amount of the lump-sum distribution shall be deducted from the member's annuity savings account in computing what contributions remain at the death of the retiree and/or a beneficiary. The lump-sum distribution option may be elected only once by a member upon initial retirement, and may not be elected by a retiree, by members applying for a disability retirement annuity, by survivors or by a member selecting Option 4-C.

(2) No change in the option selected shall be permitted after the member's death or after the member has received his first retirement check, except as provided in subsections (3) and (4) of this section. However, any retired member who is receiving a retirement allowance under Option 2 or Option 4-A upon July 1, 1999, and whose designated beneficiary predeceased him or whose marriage to a spouse who is his designated beneficiary is terminated by divorce or other dissolution, upon written notification to the retirement system of the death of the designated beneficiary or of the termination of his marriage to his designated beneficiary, the retirement allowance payable to the member after receipt of such notification by the retirement system shall be equal to the retirement allowance that would have been payable if the member had not elected the option. In addition, any retired member who is receiving the maximum retirement allowance for life, a retirement allowance under Option 1 or who is receiving a retirement allowance under Option 2 or Option 4-A on July 1, 1999, may elect to provide survivor benefits under Option 2 or Option 4-A to a spouse who was not previously the member's beneficiary and who the member married before July 1, 1999. Should a member retired on disability be returned to active service, the option previously selected shall be null and void. Upon subsequent retirement a new option may be selected.

(3) Any retired member who is receiving a reduced retirement allowance under Option 2, Option 4 or Option 4-A whose designated beneficiary predeceases him, or whose marriage to a spouse who is his designated beneficiary is terminated by divorce or other dissolution, may elect to cancel his reduced retirement allowance and receive the maximum retirement allowance for life in an amount equal to the amount that would have been payable if the member had not elected Option 2, Option 4 or Option 4-A. Such election must be made in writing to the office of the executive director of the system on a form prescribed by the board. Any such election shall be effective the first of the month following the date the election is received by the system; however, the election may be applied retroactively for not more than three (3) months but no earlier than the first of the month following the date of the death of the beneficiary.

(4) Any retired member who is receiving the maximum retirement allowance for life, or a retirement allowance under Option 1, and who marries after his retirement may elect to cancel his maximum retirement allowance and

receive a reduced retirement allowance under Option 2, Option 4 or Option 4-A to provide continuing lifetime benefits to his spouse. Such election must be made in writing to the office of the executive director of the system on a form prescribed by the board not earlier than the date of the marriage. Any such election shall be effective the first of the month following the date the election is received by the system. However, if a retiree marries or remarries after retirement and elects either Option 2, Option 4 or Option 4-A as provided in subsection (2) or (4) of this section, the actuarial equivalent factor used to compute the reduced retirement allowance shall be the factor for the age of the retiree and his or her beneficiary at the time such election for recalculation of benefits is made.

(5) Any member in service who has qualified for retirement benefits may select any optional method of settlement of retirement benefits by notifying the Executive Director of the Board of Trustees of the Public Employees' Retirement System in writing, on a form prescribed by the board, of the option he has selected and by naming the beneficiary of such option and furnishing necessary proof of age. Such option, once selected, may be changed at any time prior to actual retirement or death, but upon the death or retirement of the member, the optional settlement shall be placed in effect upon proper notification to the executive director.

(6) Notwithstanding any provision of Section 25-13-1 et seq., no payments may be made for a retirement allowance on a monthly basis for a period of time in excess of that allowed by federal law.

(7) If a retirant and his eligible beneficiary, if any, both die before they have received in annuity payments a total amount equal to the accumulated contributions standing to the retirant's credit in the annuity savings account at the time of his retirement, the difference between the accumulated contributions and the total amount of annuities received by them shall be paid to such persons as the retirant has nominated by written designation duly executed and filed in the office of the executive director. If no designated person survives the retirant and his beneficiary, the difference, if any, shall be paid pursuant to Section 25-13-21.1(1).

(8) Any retired member who retired on Option 2(5) or 4-A(5) before July 1, 1999, who is still receiving a retirement allowance as of July 1, 1999, shall receive an increase in the annual retirement allowance effective July 1, 1999, equal to the amount they would have received under Option 2 or Option 4-A without a reduction for Option 5 based on the ages at retirement of the retiree and beneficiary and option factors in effect on July 1, 1999. Such increase shall be prospective only.

(9) For purposes of this section:

(a) "Beneficiary" means any person designated to receive a retirement allowance, an annuity or other benefit as provided by this chapter. Such designation shall be in writing filed in the Office of the Executive Director of the Board of Trustees of the Public Employees' Retirement System, and no designation or change of beneficiary shall be made in any other manner; however, notwithstanding any provision of this chapter to the contrary, the lawful spouse of a member at the time of the death of a member shall be the beneficiary of such member unless the member has designated another beneficiary subsequent to the date of marriage.

(b) "Actuarial equivalent" shall mean a benefit of equal value to the accumulated contributions, annuity or benefit, as the case may be, when computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

(c) "Actuarial tables" shall mean such tables of mortality and rates of interest as shall be adopted by the board in accordance with the recommendation of the actuary.

HISTORY:

Laws, 1990, ch. 472, § 2; Laws, 1991, ch. 387 § 1; Laws, 1995, ch. 587, § 1; Laws, 1999, ch. 544, § 10; Laws, 2000, ch. 628, § 18; Laws, 2002, ch. 627, § 16; Laws, 2008, ch. 359, § 4; Laws, 2010, ch. 528, § 10; Laws, 2011, ch. 369, § 2; Laws, 2017, ch. 338, § 5, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment inserted "to the successors of the retired member" near the end of Option 4-B.

Cross References —

Death benefits when no option under this section was elected, see § 25-13-13.

Federal Aspects—

Title II of the Federal Social Security Act, see 42 USCS §§ 401 et seq.

§ 25-13-17. Credit for prior time served in highway safety patrol, armed forces.

(1) All persons who are covered under the terms of this chapter on July 1, 1958 and who become members of the retirement system shall cease to be members under the provisions of Sections 25-11-101 through 25-11-139 upon July 1, 1958, and shall become members of this retirement system with full credit for all prior service with the Highway Safety Patrol.

(2) In computing the period of service of a member of the Highway Safety Patrol, any member who served on active duty in the Armed Forces of the United States, or who served in maritime service during periods of hostility in World War II, shall be entitled to creditable service at no cost for his service on active duty in the Armed Forces or in such maritime service, provided he entered state service after his discharge from the Armed Forces or entered state service after he completed such maritime service. The maximum period for such creditable service for all military service as defined in this subsection (2) shall not exceed four (4) years unless positive proof can be furnished by such person that he was retained in the Armed Forces during World War II or in maritime service during World War II, by causes beyond his control and without opportunity of discharge. The member shall furnish proof satisfactory to the Board of Trustees of the Public Employees' Retirement System of certification of military service or maritime service records showing dates of entrance into active duty service and the date of discharge. No creditable service shall be granted for any military service or maritime service to a member who qualifies for a retirement allowance in another public retirement system administered by the Board of Trustees of the Public Employees' Retirement System based in whole or in part on such military or maritime

service. In no case shall the member receive creditable service if the member received a dishonorable discharge from the Armed Forces of the United States.

The credit for military service granted in this subsection shall apply to all persons who have retired from the Highway Patrol and who qualify for credit as outlined above, whether they retired before or after July 1, 2000; but this provision shall not operate to require any back payments of retirement.

(3)(a) Any member of the Mississippi Highway Safety Patrol Retirement System whose membership service is interrupted as a result of qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, and who has received the maximum service credit available under subsection (2) of this section, shall receive creditable service for the period of qualified military service that does not qualify as creditable service under subsection (2) of this section upon reentering membership service in an amount not to exceed five (5) years if:

(i) The member pays the contributions he would have made to the retirement system if he had remained in membership service for the period of qualified military service based upon his salary at the time his membership service was interrupted;

(ii) The member returns to membership service within ninety (90) days of the end of his qualified military service; and

(iii) The employer at the time the member's service was interrupted and to which employment the member returns pays the contributions it would have made into the retirement system for such period based on the member's salary at the time the service was interrupted.

(b) The payments required to be made in paragraph (a)(i) of this subsection may be made over a period beginning with the date of return to membership service and not exceeding three (3) times the member's qualified military service; however, in no event shall such period exceed five (5) years.

(c) The member shall furnish proof satisfactory to the board of trustees of certification of military service showing dates of entrance into qualified service and the date of discharge as well as proof that the member has returned to active employment within the time specified.

HISTORY:

Codes, 1942, § 8090-59; Laws, 1958, ch. 543, § 9; Laws, 1974, ch. 413; Laws, 1980, ch. 470, § 3; Laws, 2000, ch. 419, § 1; Laws, 2001, ch. 438, § 6; Laws, 2002, ch. 627, § 17, eff from and after July 1, 2002.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation clarified effective dates listed in this section. The words "on the date on which this retirement system is established" were changed to "on July 1, 1958," and the words "upon the effective date of this chapter" were changed to "upon July 1, 1958." The Joint Committee ratified these corrections at its May 16, 2002, meeting.

Editor's Notes —

Laws of 1980, ch. 470, § 4, provides as follows:

"SECTION 4. The Legislature hereby directs the board of trustees of the public employees' retirement system to add to the member contribution rate the cost of funding the amendment in this act."

Federal Aspects—

Qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, see 26 USCS § 414(u)(5).

§ 25-13-19. Transfer of state retirement annuity fund contributions.

In any case in which a highway patrolman has been a member of the state retirement annuity system under Sections 25-11-101 through 25-11-139 and has made contributions thereto, all employee's contributions, plus interest credited thereto, inuring to the credit of any such highway patrolman shall be transferred by the public employees' retirement system to the credit of the individual highway patrolman in the disability and relief fund established by this chapter, and shall be considered an asset to the credit of the highway patrolman in this retirement system.

HISTORY:
Codes, 1942, § 8090-60; Laws, 1958, ch. 543, § 10, eff from and after July 1, 1958.

§ 25-13-21. Refund of contributions; rollover distribution to retirement plan or account; repayment of refund upon subsequent reentry into service.

In the event a highway patrolman ceases to work for the Highway Safety Patrol for any reason other than occupational disease contracted or for any accident sustained by the patrolman by reason of his service or discharge of his duty in the Highway Patrol, and if the highway patrolman is not eligible for retirement either for service or disability, he shall be refunded the amount of his total contribution under the provisions of this chapter, including any credit transferred to his account in this system from any other system, at his request; and should he die before retirement, his total contribution is to be refunded to any beneficiary he may name. If there is no surviving designated beneficiary, the contributions to the credit of the deceased member shall be refunded pursuant to Section 25-13-21.1(1).

Pursuant to the Unemployment Compensation Amendments of 1992 (Public Law 102-318 (UCA)), a member or the spouse of a member who is an eligible beneficiary entitled to a refund under this section may elect, on a form prescribed by the board under rules and regulations established by the board, to have an eligible rollover distribution of accumulated contributions payable under this section paid directly to an eligible retirement plan, as defined under applicable federal law, or an individual retirement account. If the member or the spouse of a member who is an eligible beneficiary makes that election and specifies the eligible retirement plan or individual retirement account to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. A nonspouse beneficiary may elect to have an eligible rollover distribution paid in the form of a direct trustee-to-trustee transfer to an individual retirement account established to receive the distribution on behalf of the nonspouse beneficiary. Flexible rollovers under this subsection shall not be considered assignments under Section 25-13-31.

If any highway patrolman who receives a refund reenters the service of the Highway Safety Patrol and again becomes a member of the system, he may repay all amounts previously received by him as a refund, together with regular interest covering the period from the date of refund to the date of repayment; however, the amounts that are repaid by the member and the creditable service related thereto shall not be used in any benefit calculation or determination until the member has remained a contributor to the system for a period of at least five (5) years after the member's reentry into state service. Repayment for such time shall be made beginning with the most recent service for which refund has been made. Upon the repayment of all or part of the refund and interest, the highway patrolman shall again receive credit for the period of creditable service for which full repayment has been made to the system.

HISTORY:

Codes, 1942, § 8090-61; Laws, 1958, ch. 543, § 11; Laws, 1977, ch. 363; Laws, 1999, ch. 544, § 11; Laws, 2000, ch. 628, § 19; Laws, 2001, ch. 438, § 7; Laws, 2002, ch. 313, § 5; Laws, 2008, ch. 359, § 7; Laws, 2016, ch. 397, § 16; Laws, 2017, ch. 338, § 3, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment deleted "in increments of not less than one (1) month of creditable service" following "shall be made" in the next-to-last sentence of the last paragraph.

§ 25-13-21.1. Persons to whom benefits payable in event of death of designated beneficiary.

(1) Except as otherwise provided in subsection (2) of this section, where benefits are payable to a designated beneficiary or beneficiaries under this article and the designated beneficiary or beneficiaries as provided by the member on the most recent form filed with the system are deceased or otherwise disqualified at the time such benefits become payable, the following persons, in descending order of precedence, shall be eligible to receive such benefits:

(a) The surviving spouse of the member or retiree;

(b) The children of the member or retiree or their descendants, per stirpes;

(c) The brothers and sisters of the member or retiree or their descendants, per stirpes;

(d) The parents of the member or retiree;

(e) The executor or administrator on behalf of the member or retiree's estate;

(f) The persons entitled by law to distribution of the member or retiree's estate.

(2) Any monthly benefits payable to a beneficiary who dies prior to cashing his or her final check(s) and/or any additional benefits payable pursuant to Section 25-13-12 still payable at the death of a beneficiary receiving monthly benefits shall be paid as follows:

(a) The surviving spouse of the beneficiary;

(b) The children of the beneficiary or their descendants, per stirpes;

(c) The brothers and sisters of the beneficiary or their descendants, per stirpes;

(d) The parents of the beneficiary;

(e) The executor or administrator on behalf of the beneficiary's estate;

(f) The persons entitled by law to distribution of the beneficiary's estate.

(3) In the event no claim is made by any individual listed in subsection (2) of this section, a distribution may be made pursuant to the provisions of subsection (1) of this section.

(4) Payment under the provisions of this section shall bar recovery by any other person of the benefits distributed. Payment of benefits made to one or more members of a class of individuals are made on behalf of all members of the class. Any members of the class coming forward after payment is made must look to those who received the payment.

HISTORY:
Laws, 2000, ch. 628, § 4, eff from and after July 1, 2000.

§ 25-13-22. Retirement system authorized to accept eligible rollover distributions to repay fund or for purchase of optional service credit.

Effective July 1, 2000, and subject to the rules adopted by the board of trustees, the system shall accept an eligible rollover distribution or a direct transfer of funds from another eligible retirement plan, as defined under applicable federal law, or an individual retirement account, in payment of all or a portion of the cost to purchase optional service credit or to reinstate previously withdrawn service credit as permitted by the system. The system may only accept rollover payments in an amount equal to or less than the balance due for purchase or reinstatement of service credit. The rules adopted by the board shall condition the acceptance of a rollover or transfer from another eligible retirement plan or an individual retirement account on the receipt of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

HISTORY:
Laws, 1999, ch. 544, § 12, eff from and after July 1, 1999; Laws, 2002, ch. 313, § 6, eff from and after passage (approved Mar. 14, 2002).

§ 25-13-23. Non-covered employees.

All other employees of the Mississippi highway safety patrol who are not covered by this chapter shall continue as members of the Public Employees' Retirement System of Mississippi as set forth in Sections 25-11-1 through 25-11-139, and shall continue to be subject to all provisions of said sections.

HISTORY:
Codes, 1942, § 8090-62; Laws, 1958, ch. 543, § 12, eff from and after July 1, 1958.

Cross References —
Membership in Public Employees' Retirement System, see § 25-11-105.

§ 25-13-25. Administrative board.

There is established an administrative board for the Mississippi Highway Safety Patrol Retirement System, which shall be composed of the Commissioner of Public Safety, four (4) active members of the retirement system elected by the active members of the system, and one (1) retired member of the retirement system elected by the retired members of the system. The administrative board, with approval of the Attorney General, may make any and all regulations necessary for the efficient, orderly and successful operation of this chapter, not inconsistent herewith. This is a remedial chapter and entitled to a broad and liberal interpretation to accomplish its purpose.

HISTORY:

Codes, 1942, § 8090-63; Laws, 1958, ch. 543, § 13; Laws, 1999, ch. 544, § 13, eff from and after July 1, 1999.

Cross References —

Actuarial valuation of contributions required for membership in highway safety patrol retirement system, see § 25-13-29.

§ 25-13-27. Cost of administering fund; maintenance and disclosure of records.

The Public Employees' Retirement System of Mississippi is hereby authorized to deduct two percent (2%) of all employers' contributions paid into the "disability and relief fund for members of the Mississippi Highway Safety Patrol" to be transferred to the expense fund of the Public Employees' Retirement System of Mississippi to defray the cost of administering this fund. All books, accounts, and records shall be kept in the general office of the Public Employees' Retirement System of Mississippi and shall be public records except for individual member records. The system shall not disclose the name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains.

HISTORY:

Codes, 1942, § 8090-64; Laws, 1958, ch. 543, § 14; Laws, 1988, ch. 396, § 4, eff from and after July 1, 1986.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the first sentence was corrected by substituting "...two percent (2%) of all employers' contributions..." for "two percent (2%) of all employers contributions..."

§ 25-13-28. Interest on employee reserve account.

Regular interest shall be credited annually to the mean amount of the employee reserve account for the preceding year. This credit shall be made annually from interest and other earnings on the invested assets of this system. Any additional amount required to meet the regular interest on the funds of this system shall be charged to the employer's accumulation account, and any excess of earnings over such regular interest required shall be credited to the employer's accumulation account. Regular interest shall mean the percentage rate of interest compounded annually as determined by the Board of Trustees of the Public Employees' Retirement System.

Once interest is credited it shall be added to the sum of all amounts deducted from the compensation of a member and shall be included in determining his total contributions.

HISTORY:
Laws, 1991, ch. 513, § 13; Laws, 2010, ch. 528, § 11, eff from and after July 1, 2010.

§ 25-13-29. Actuarial valuation.

At least once in each biennium the administrative board shall cause an actuarial valuation to be made by an actuary who shall certify to the assets and liabilities of the system and the amount of employer's contributions required for membership service and prior service. The cost of the survey shall be paid from any funds available to the Highway Safety Patrol.

On account of each member there shall be paid quarterly into the "Disability and Relief Fund for Members of the Mississippi Highway Safety Patrol" by the Highway Safety Patrol from any funds available an amount equal to a certain percentage of the compensation of each member to be known as the "normal contributions," and an additional amount equal to a percentage of his compensation to be known as the "accrued liability contribution." The rate percent of such contributions shall be fixed by the administrative board on the basis of the liabilities of the retirement system for the various allowances and benefits as shown by the actuarial valuation.

HISTORY:
Codes, 1942, § 8090-65; Laws, 1958, ch. 543, § 15; Laws, 1966, ch. 620, § 4; Laws, 2002, ch. 627, § 18, eff from and after July 1, 2002.

Cross References —
Establishment of administrative board to enact regulations necessary to operation of highway safety patrol retirement system, see § 25-13-25.

OPINIONS OF THE ATTORNEY GENERAL

No specific authority can be found in Mississippi Code to allow Board of Trustees of county owned community hospital to pay retroactive raises to hospital employees; such employees are public servants within meaning of Mississippi Constitution and are therefore prohibited from receiving retroactive pay raises. 1990 Miss. Op. Att'y Gen. 60.

§ 25-13-31. Exemption of benefits from taxation, legal execution, and assignment; deductions from retirement allowances for payment of employer or system sponsored group life or health insurance.

(1) The right of a person to an annuity, a retirement allowance or benefit, or to the return of contributions, or to any optional benefits or any other right accrued or accruing to any person under the provisions of the Highway Patrol Retirement Law, the system and the monies in the system created by said law, are hereby exempt from any state, county or municipal ad valorem taxes, income taxes, premium taxes, privilege taxes, property taxes, sales and use taxes or other taxes not so named, notwithstanding any other provision of law to the contrary, and exempt from levy and sale, garnishment, attachment, or

any other process whatsoever, and shall be unassignable except as specifically otherwise provided in this article.

(2) Any retired member or beneficiary receiving a retirement allowance or benefit under this article may authorize the Public Employees' Retirement System to make deductions from the retirement allowance or benefit for the payment of employer or system sponsored group life or health insurance. The deductions authorized under this subsection shall be subject to rules and regulations adopted by the Board of Trustees of the Public Employees' Retirement System.

HISTORY:

Laws, 1975, ch. 500, § 2; Laws, 1987, ch. 327, § 2; Laws, 1990, ch. 523, § 4; Laws, 1993, ch. 523, § 5; Laws, 2004, ch. 531, § 4, eff from and after July 1, 2004.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last line of (2). The words "Board of the Public Employees' Retirement System" were changed to "Board of Trustees of the Public Employees' Retirement System". The Joint Committee ratified the correction at its June 29, 2005, meeting.

Editor's Notes —

Laws of 1990, ch. 523, § 8, effective from and after January 1, 1990, and Laws of 1993, ch. 523, § 6, effective from and after January 1, 1994, provide as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 25-13-33. Guaranty; vested rights to benefits; maximum annual retirement allowance.

(1) The maintenance of actuarial reserves for the various allowances and benefits under this chapter, and the payment of all annuities, retirement allowances, refunds and other benefits granted under this chapter are made obligations of the disability and relief fund. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the obligations of the system.

(2) In the event of the termination of the Mississippi Highway Safety Patrol Retirement System, established pursuant to the provisions of Section 25-13-1 et seq., all members of the system as of the date of termination of the system shall be deemed to have a vested right to benefits to the extent and in the same manner that rights would be vested under the statute existing as of the date of termination of the system; except that any member who, because of a termination of the system has not fulfilled the requirements for length of service, shall be entitled to compensation as of the date that such member would otherwise be eligible, with such compensation to be computed on the basis of time actually a member of the service and compensation actually earned during the time as a member, in the manner now provided by statute.

In the event of a deficit in the availability of funds for payment due under the provisions of the Mississippi Highway Safety Patrol Retirement System, an appropriation shall be made sufficient for the payment thereof as an obligation of the State of Mississippi.

(3)(a) Notwithstanding any provisions of this section or chapter to the contrary, the maximum annual retirement allowance attributable to the employer contributions payable by the system to a member shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued thereunder as applicable to governmental plans as the term is defined under Section 414(d) of the Internal Revenue Code.

(b) The Board of Trustees of the Public Employees' Retirement System is authorized to provide by rule or regulation for the payment of benefits as provided under this chapter to members or beneficiaries of the Highway Safety Patrol Retirement System at a time and under circumstances not otherwise provided for in this chapter to the extent that the payment is required to maintain the Highway Safety Patrol Retirement System as a qualified retirement plan for purposes of federal income tax laws.

(4) Notwithstanding any other provision of this plan, all distributions from this plan shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, applicable to governmental plans, as defined in Section 414(d) of the Internal Revenue Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Internal Revenue Code. Further, such regulations shall override any plan provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code.

(5) The actuarial assumptions used to convert a retirement allowance from the normal form of payment to an optional form of payment shall be an appendix to this chapter and subject to approval by the board of trustees based upon certification by the actuary.

(6) Notwithstanding any other provision of this plan, the maximum compensation that can be considered for all plan purposes shall not be greater than that allowed under Section 401(a)(17) of the Internal Revenue Code.

HISTORY:

Laws, 1979, ch. 415, § 1; Laws, 1992, ch. 576 § 9; Laws, 1995, ch. 624, § 10; Laws, 2001, ch. 438, § 8; Laws, 2002, ch. 627, § 19; Laws, 2007, ch. 348, § 3, eff from and after July 1, 2007.

Federal Aspects—

Sections 401, 414, and 415 of the Internal Revenue Code, see 26 USCS §§ 401, 414, 415.

RESEARCH REFERENCES

Am. Jur.

60 Am. Jur. 2d, Pensions and Retirement Funds §§ 1619, 1631, 1712.

§ 25-13-35. Repealed.

Repealed by its own terms, eff July 1, 1992.
[Laws, 1991, ch. 513, § 14]

Editor's Notes —

Former § 25-13-35 pertained to situation where person was reemployed after retirement.

CHAPTER 14.

GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLAN LAW

Sec.
25-14-1. Title.
25-14-3. Definitions.
25-14-5. Deferred compensation program authorized; investment; deferred compensation exempt from tax and execution.
25-14-7. Administration of deferred compensation program.
25-14-9. Investment of monies in life insurance and annuity contracts or in other funds authorized.
25-14-11. Deferred compensation program additional to other retirement, pension, and benefit systems.
25-14-13. Deferred compensation considered as compensation for purpose of retirement, pension, and benefit programs.
25-14-15. Deferred compensation not included for withholding taxes purposes.

§ 25-14-1. Title.

This chapter shall be known as the "Government Employees Deferred Compensation Plan Law," and may be so cited.

HISTORY:

Laws, 1973, ch. 399, § 1, eff from and after passage (approved March 28, 1973).

OPINIONS OF THE ATTORNEY GENERAL

Upon the sale or lease of its community hospital, the board of supervisors of a county could assume the duties of sponsor of the deferred compensation plan now offered by the hospital. 2000 Miss. Op. Att'y Gen. 170.

Section 41-13-35 (5)(b) provides the Hospital System the ability to adopt and administer an ineligible 457(f) plan. This opinion does not contradict earlier opinions nor supersede them in that they relate to the eligible 457(b) plan as provided for in §§ 25-14-1 et seq. 2004 Miss. Op. Att'y Gen. 660.

Payroll deductions for Sam's Club memberships for municipal employees are not authorized. 2005 Miss. Op. Att'y Gen. 7.

The deferred compensation program authorized under Sections 25-14-1 et seq. does not authorize employer contributions to the deferred compensation program administered by the Public Employees's Retirement System. 2006 Miss. Op. Att'y Gen. 241.

§ 25-14-3. Definitions.

For the purposes of this chapter, the term "employee" means any person, whether appointed, elected, or under contract, providing services for the State of Mississippi, state agencies, counties, municipalities, or other political subdivisions, for which compensation is paid.

HISTORY:

Laws, 1973, ch. 399, § 2, eff from and after passage (approved March 28, 1973).

OPINIONS OF THE ATTORNEY GENERAL

An individual providing dental services to county inmates is not an "employee" under the statute. 1998 Miss. Op. Att'y Gen. 397.

§ 25-14-5. Deferred compensation program authorized; investment; deferred compensation exempt from tax and execution.

The State of Mississippi, or any state agency, county, municipality or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's income, and a county, municipality or other political subdivision, except community and junior college districts, may make contributions to the plan on behalf of actively participating members on a uniform basis through an employer contribution agreement as provided for in the Mississippi Deferred Compensation Plan and Trust Plan Document if making the contribution does not conflict with any other state law. Those funds may subsequently be used to purchase a fixed or variable life insurance or annuity contract authorized for purchase by the Public Employees' Retirement System of Mississippi for the purpose of protecting its obligation to the deferred compensation program for the employee from any life underwriter duly licensed by this state who represents an insurance company licensed to contract fixed and variable annuities and fixed or variable life insurance business in this state and authorized by the Public Employees' Retirement System of Mississippi to offer their products in the plan, or to purchase any investments authorized for purchase by the Public Employees' Retirement System of Mississippi under Section 25-11-121, or to invest those monies in a fund or funds maintained by a corporate trustee, which fund or funds are used as an investment media for retirement, pension or profit sharing plans that are tax qualified for that purpose. However, in the administration of this plan, the Public Employees' Retirement System of Mississippi may adopt such regulations as are reasonable and necessary to assure the orderly functioning of the plan, but those regulations shall not unreasonably restrict all licensed life underwriters and insurance companies described in this section from concurrently participating in providing contracts authorized under this section. Anything in any other law to the contrary notwithstanding, the deferred portion of the employee's compensation, the plan and the monies in the plan created by this chapter are exempt from any state, county or municipal ad valorem taxes, income taxes, premium taxes, privilege taxes, property taxes, sales and use taxes and any other taxes not so named, until the deferred compensation is paid to the employee or beneficiary and exempt from levy, garnishment, attachment or any other process whatsoever.

HISTORY:

Laws, 1973, ch. 399, § 3; Laws, 1974, ch. 549 § 1; Laws, 1979, ch. 392, § 1; Laws, 1987, ch. 327, § 3; Laws, 2007, ch. 505, § 1, eff from and after passage (approved Mar. 30, 2007).

Cross References —

Public Employees' Retirement Law, see §§ 25-11-1 et seq.

Investment of retirement funds, see § 25-11-121.

Exemption of retirement funds from execution, see § 25-11-129.

§ 25-14-7. Administration of deferred compensation program.

The administration of the deferred compensation program shall be under the direction of the Public Employees' Retirement System of Mississippi or the appropriate officer designated by a county, municipality or other political subdivision. The deferred compensation program shall be operated in accordance with the guidelines established by the Internal Revenue Service as reflected in the plan document as may be modified from time to time by the board of trustees. Payroll reductions shall be made, in each instance, by the appropriate payroll officer. The administrator of a deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services if deemed necessary by the administrator.

The board of trustees may levy such charges and fees on participants' contributions as may reasonably be necessary to provide for the administrative expenses of operating the deferred compensation program, including, but not limited to, the services of auditors, consultants, money managers and third-party administrators.

HISTORY:

Laws, 1973, ch. 399, § 4; Laws, 1974, ch. 549, § 2; Laws, 1991, ch. 513, § 17; Laws, 2007, ch. 505, § 2, eff from and after passage (approved Mar. 30, 2007).

Cross References —

State Treasurer generally, see §§ 7-9-1 et seq.

Public Employees' Retirement Law, see §§ 25-11-1 et seq.

§ 25-14-9. Investment of monies in life insurance and annuity contracts or in other funds authorized.

Notwithstanding any other provision of law to the contrary, the Public Employees' Retirement System of Mississippi or the appropriate officer of a county, municipality, or other political subdivision designated to administer a deferred compensation program is hereby authorized to invest the monies held pursuant to a deferred compensation program in fixed and variable life insurance or annuity contracts; or to purchase any investments authorized for purchase by the Public Employees' Retirement System of Mississippi under Section 25-11-121, Mississippi Code of 1972; or to invest such monies in a fund or funds maintained by a corporate trustee, which fund or funds are used as an investment media for retirement, pension or profit sharing plans that are tax qualified for such purpose.

HISTORY:

Laws, 1973, ch. 399, § 5; Laws, 1974, ch. 549, § 3, eff from and after passage (approved April 12, 1974).

§ 25-14-11. Deferred compensation program additional to other retirement, pension, and benefit systems.

The deferred compensation program established by this chapter shall exist and serve in addition to other retirement, pension, or benefit systems established by the State of Mississippi, state agencies, counties, municipalities, or other political subdivisions. The deferred compensation program established by this chapter shall not supersede, make inoperative, or reduce any benefits provided by the Public Employees' Retirement System of Mississippi, by the Teachers' Retirement System of Mississippi, by programs established under the general municipal employees' retirement act, or by any other retirement, pension, or benefit program established by law.

HISTORY:
Laws, 1973, ch. 399, § 6, eff from and after passage (approved March 28, 1973).

Cross References —
General Municipal Employees' Retirement Law, see §§ 21-29-1 et. seq.

Public Employees' Retirement Law, see §§ 25-11-1 through 25-11-141.

Teachers' Retirement System, see §§ 25-11-201 et seq.

Highway Safety Patrol Retirement System, see §§ 25-13-1 et. seq.

§ 25-14-13. Deferred compensation considered as compensation for purpose of retirement, pension, and benefit programs.

Notwithstanding any other provision of law to the contrary, any compensation deferred under this chapter shall be considered part of an employee's compensation for purposes of any other employee retirement, pension, or benefit program. No deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit program provided by law.

HISTORY:
Laws, 1973, ch. 399, § 7, eff from and after passage (approved March 28, 1973).

§ 25-14-15. Deferred compensation not included for withholding taxes purposes.

Notwithstanding any other provision of this chapter or any other provision of law to the contrary, any sum deferred under the deferred compensation program shall not be included for the purposes of computation of any taxes withheld on behalf of any employee.

HISTORY:
Laws, 1973, ch. 399, § 8, eff from and after passage (approved March 28, 1973).

Cross References —
Withholding of tax, see §§ 27-7-301 et. seq.

CHAPTER 15.

GROUP INSURANCE FOR PUBLIC EMPLOYEES

Article 1. State Employees Life and Health Insurance Plan. 25-15-1
Article 3. Group Insurance for Employees of Local Governments and Their Institutions and Agencies. 25-15-101
Article 5. Group Insurance for National Guard. 25-15-201
Article 7. Group Health Insurance Plan for Employees of School Districts and Community/Junior College Districts. [Repealed]. 25-15-251
Article 9. Administration of Group Insurance Plans. 25-15-301

ARTICLE 1.

STATE EMPLOYEES LIFE AND HEALTH INSURANCE PLAN.

Sec.
25-15-1. Repealed.
25-15-3. Definitions.
25-15-5. Powers and duties of department.
25-15-7. Exclusions.
25-15-9. Formulation of state employees health insurance plan; benefits.
25-15-11. Contracts of insurance; self insurance; contracts for administration of plan; reports, reviews and audits.
25-15-13. Eligibility.
25-15-14. Elected state or district officials; participation in plans after leaving office.
25-15-15. Payment of premiums; active full-time employees assessed portion of active employee premium under certain circumstances; purchase of additional coverage; late charges and interest penalties; State Employees Insurance Fund; Insurance Reserve Fund [Repealed effective July 1, 2022].
25-15-16. Public school districts may use local funds to pay full cost of health insurance premiums for certain school bus drivers.
25-15-17. Payment of benefits.
25-15-19. Notification of commencement of payroll deductions.
25-15-21. Repealed.
25-15-23. Withdrawals from State Employees Life and Health Insurance Plan prohibited.
25-15-25. Repealed.

§ 25-15-1. Repealed.

Repealed by Laws, 1988, ch. 479, § 7, eff from and after July 1, 1988. [Codes, 1942, § 5834-131; Laws, 1971, ch. 523, § 1; 1984, ch. 488, § 142]

Editor's Notes —

Former § 25-15-1 created a division of state employees life and health insurance within the commission of budget and accounting.

§ 25-15-3. Definitions.

For the purposes of this article, the words and phrases used herein shall have the following meanings:

(a) "Employee" means a person who works full time for the State of Mississippi and receives his compensation in a direct payment from a department, agency or institution of the state government and any person who works full time for any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver. This shall include legislators, employees of the legislative branch and the judicial branch of the state and "employees" shall include full-time salaried judges and full-time district attorneys and their staff and full-time compulsory school attendance officers. For the purposes of this article, any "employee" making contributions to the State of Mississippi retirement plan shall be considered a full-time employee.

(b) "Department" means the Department of Finance and Administration.

(c) "Plan" means the State and School Employees Life and Health Insurance Plan created under this article.

(d) "Fund" means the State and School Employees Insurance Fund set up under this article.

(e) "Retiree" means any employee retired under the Mississippi retirement plan.

(f) "Board" means the State and School Employees Health Insurance Management Board created under Section 25-15-303.

HISTORY:

Codes, 1942, § 5834-132; Laws, 1971, ch. 523, § 2; Laws, 1972, ch. 537, § 1; Laws, 1984, ch. 488, § 143; Laws, 1999, ch. 511, § 1; Laws, 2002, ch. 636, § 4; Laws, 2016, ch. 397, § 19, eff from and after July 1, 2016.

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 1990, Chapter 588, § 35, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed. Text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Cross References —

State and School Employees Health Insurance Management Board membership, see § 25-15-303.

Power and duty of state fiscal officer (now the executive director of the Department of Finance and Administration) to coordinate and administer State Employees Life and Health Plan, see § 27-104-31.

JUDICIAL DECISIONS

1. In general.

In absence of any apparent rationale why the definition of "employee" should be different in case of county and local employees, the definition of "employee" in § 25-15-3(a), even though strictly speaking applicable to only statutes relating to health and life insurance for state employees, nevertheless exerts an electromagnetic force determinative of the issue as to whether deputy chancery clerks and deputy circuit clerks are "employees" within the meaning of § 25-1-101. Warren County v. Culkin, 497 So. 2d 433, 1986 Miss. LEXIS 2747 (Miss. 1986).

During the period from 1982 to 1984, county board of supervisors, by virtue of § 25-15-101, had lawful authority to obtain group life, medical and accident insurance for the benefit of county employees and to include within the employee so benefited deputy chancery clerks and deputy circuit clerks and to pay the premiums for such insurance out of general county funds. Warren County v. Culkin, 497 So. 2d 433, 1986 Miss. LEXIS 2747 (Miss. 1986).

OPINIONS OF THE ATTORNEY GENERAL

All full-time employees of MPIA, Inc. are, for purposes of eligibility for state group health and life insurance benefits, considered to be state employees, and therefore entitled to participate in such group insurance plans. 1991 Miss. Op. Att'y Gen. 331.

MPIA employees receive their compensation from a department, agency or institution of state government, and as such, MPIA is responsible for all employer contributions required under the law to be made on behalf and for the benefit of state employees. 1991 Miss. Op. Att'y Gen. 697.

If individual is employee, individual is eligible for health insurance benefits assuming that requirements relating to full-time employment and direct payment of compensation from an agency of state government are also met. 1994 Miss. Op. Att'y Gen. 949.

Self-insured health plans of state of Mississippi are responsibility of state and such liability cannot be transferred to provider organizations. 1994 Miss. Op. Att'y Gen. 921.

An employee of an economic development district is not a state employee pursuant to Section 25-15-3(a), regardless of the employee's contributions to the state retirement plan. Therefore, the employees of MMDD are not eligible to participate in the State Employees Life and Health Insurance Plan. 1995 Miss. Op. Att'y Gen. 597.

If an individual is not working full time and is not making contributions to the State of Mississippi retirement plan, then that individual cannot be considered to be an employee as defined in Section 25-15-3. The employing department, agency, institution, etc., could not in this situation pay the individual's health insurance premium or the state's share of the employee's life insurance premium for the time he or she was not working. 1996 Miss. Op. Att'y Gen. 220.

If governing authorities fail to elect officers such as a police chief and clerk, the incumbent officers may serve until their successors are appointed. 1997 Miss. Op. Att'y Gen. 401.

For purposes of Section 25-15-3, an employee is considered full time so long as he is receiving compensation from his employer in the form of payment for work performed, medical or personal (vacation) leave, thus, if the employee is not receiving compensation from one of these sources and is not making contributions to the state retirement plan, then the district would have no authority to continue to pay the health insurance premiums for the employee. 2002 Miss. Op. Att'y Gen. 417.

The provisions of Title 83, including Sections 83-9-5 and 83-9-32, which are placed squarely within the jurisdiction of the Department of Insurance, are not applicable to the State and School Employees Health Insurance Plan, which is clearly under the administration of the State and School Employees Health Insurance Management Board under the umbrella of the Department of Finance and Administration. 2002 Miss. Op. Att'y Gen. 668.

The State and School Employees Health Insurance Plan is not governed by ERISA. 2002 Miss. Op. Att'y Gen. 668.

The article governing group insurance for employees of local governments and their institutions and agencies, §§ 25-15-101 through 25-15-105, are not governed by the definition of "employee" as found in subsection (a) of this section. Such local employers may adopt their own leave policies and contract for group insurance, through which they may provide for payment of health insurance premiums for employees who are off work due to a work-related injury. 2004 Miss. Op. Att'y Gen. 699.

§ 25-15-5. Powers and duties of department.

(1) The board shall administer the plan and is authorized to adopt and promulgate rules and regulations for its administration, subject to the terms and limitations contained in this article.

(2) The board shall develop a five-year strategic plan for the insurance plan established by Section 25-15-3 et seq. The strategic plan shall address, but not be limited to:

(a) Changing trends in the health care industry, and how they effect delivery of services to members of the plan.

(b) Alternative service delivery systems.

(c) Any foreseeable problems with the present system of delivering and administering health care benefits in Mississippi.

(d) The development of options and recommendations for changes in the plan.

(3) To carry out the requirements of subsection (2) of this section, the board may conduct formal research, including questionnaires and attitudinal surveys of members' needs and preferences with respect to service delivery.

(4) After the board has complied with all provisions of Section 25-15-9 regarding the establishment of the plan, it shall be responsible for fully disclosing to plan members the provisions of the plan. Such disclosure shall consist of the dissemination of educational material on the plan and any proposed changes thereto. The board shall provide members with complete educational materials at least thirty (30) days before the date upon which the plan's members must select a plan option for health care services. The board shall further use the resources of the Mississippi Authority for Educational Television or other state agency, university or college to provide information on proposed changes. The board may also use other state-owned media, as well as public service announcements on private media to disseminate information regarding proposed changes in the plan.

(5) The board shall develop and make available for public review at its offices a comprehensive plan document which documents all benefits for which members of the plan created by Section 25-15-3 et seq. are eligible. This document shall be typed and maintained also at the offices of any administrator contracted with in accordance with Section 25-15-301.

(6)(a) The board may enter into contracts with accountants, actuaries and other persons from the private sector whose skills are necessary to carry out the purposes of Section 25-15-3 et seq.

(b) Before the board enters into any contract for services as provided in paragraph (a) of this subsection, the board shall first determine that the services are required, and that the staff of the board and personnel of other state agencies are not sufficiently experienced to provide the services.

(c) If the service is to be rendered for a period of in excess of six (6) months, the board shall seek and obtain bids for the service in a manner identical to that provided for in Section 25-15-301, subsection (1)(a) and (b) except for those provisions which specifically state criteria which are applicable only to third-party administrators contracted with in accordance with Section 25-15-3 et seq.

(d) The board is also authorized to procure legal services if it deems these services to be necessary to carry out its responsibilities under Section 25-15-3 et seq.

HISTORY:

Codes, 1942, § 5834-133; Laws, 1971, ch. 523, § 3; Laws, 1984, ch. 488, § 144; Laws, 1985, ch. 525, § 33; Laws, 1999, ch. 511, § 2, eff from and after July 1, 1999.

Editor's Notes —

Laws of 1990, Chapter 588, § 36, amended this section effective July 1, 1990, provided the Legislature by concurrent resolution adopted by the House and Senate in session prior to

July 1, 1990, declared that sufficient funds were dedicated and made available for the implementation of Chapter 588. Funds, however, were not made available by the Legislature prior to July 1, 1990, and, by direction of the Office of the Attorney General of the State of Mississippi, the amendatory provisions have not been printed. The text of the proposed amendment can be found in the 1990 General Laws of Mississippi.

Laws of 1995, ch. 554, which is referred to in subsection (7), amended §§ 25-15-5, 25-15-9, 25-15-11 and [25-15-255 repealed] and added § 25-15-301.

Cross References —

State Personnel Board generally, see §§ 25-9-101 et seq.

Withdrawals from State Employees Life and Health Insurance Plan prohibited, see § 25-15-23.

Contracting of administration of plan, see § 25-15-301.

JUDICIAL DECISIONS

1. In general.

Administration of public purchasing, administration of state employee's group insurance program, and authority to approve rules adopted by the State Auditor for establishing a merit system for his employees, are administrative functions within the prerogative of the executive department, and thus, named legislators could not constitutionally perform any of those functions because they properly belonged to the executive department; moreover, the statutes vesting those powers in members of the legislature are unconstitutional. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

§ 25-15-7. Exclusions.

Such health insurance shall not include expense incurred by or on account of an individual prior to July 1, 1972, as to him; dental care and treatment, except dental surgery and appliances to the extent necessary for the correction of damage caused by accidental injury while covered by the plan, or as a direct result of disease covered by the plan; eyeglasses, hearing aids, and examinations for the prescription or fitting thereof; cosmetic surgery or treatment, except to the extent necessary for correction of damage by accidental injury while covered by the plan or as a direct result of disease covered by the plan; services received in a hospital owned or operated by the United States government for which no charge is made; services received for injury or sickness due to war or any act of war, whether declared or undeclared, which war or act of war shall have occurred after July 1, 1972; expense for which the individual is not required to make payment; expenses to the extent of benefits provided under any employer group plan other than this plan, in which the state participates in the cost thereof; and such other expenses as may be excluded by regulations of the board.

HISTORY:

Codes, 1942, § 5834-134; Laws, 1971, ch. 523, § 4, eff from and after July 1, 1972.

Cross References —

Withdrawals from State Employees Life and Health Insurance Plan prohibited, see § 25-15-23.

RESEARCH REFERENCES

ALR.

Event as occurring within period of coverage of "occurrence" and "discovery" or "claims made" liability policies. 37 A.L.R.4th 382.

Am. Jur.

14A Am. Jur. Pl & Pr Forms (Rev), Insurance, Form 724.1 (Complaint, petition, or declaration-Wrongful death expected or intended result of insured's conduct excluded from policy-Declaratory judgment).

§ 25-15-9. Formulation of state employees health insurance plan; benefits.

(1)(a) The board shall design a plan of health insurance for state employees that provides benefits for semiprivate rooms in addition to other incidental coverages that the board deems necessary. The amount of the coverages shall be in such reasonable amount as may be determined by the board to be adequate, after due consideration of current health costs in Mississippi. The plan shall also include major medical benefits in such amounts as the board determines. The plan shall provide for coverage for telemedicine services as provided in Section 83-9-351. The board is also authorized to accept bids for such alternate coverage and optional benefits as the board deems proper. The board is authorized to accept bids for surgical services that include assistance in locating a surgeon, setting up initial consultation, travel, a negotiated single case rate bundle and payment for orthopedic, spine, bariatric, cardiovascular and general surgeries. The surgical services may only utilize surgeons and facilities located in the State of Mississippi unless otherwise provided by the board. Any contract for alternative coverage and optional benefits shall be awarded by the board after it has carefully studied and evaluated the bids and selected the best and most cost-effective bid. The board may reject all of the bids; however, the board shall notify all bidders of the rejection and shall actively solicit new bids if all bids are rejected. The board may employ or contract for such consulting or actuarial services as may be necessary to formulate the plan, and to assist the board in the preparation of specifications and in the process of advertising for the bids for the plan. Those contracts shall be solicited and entered into in accordance with Section 25-15-5. The board shall keep a record of all persons, agents and corporations who contract with or assist the board in preparing and developing the plan. The board in a timely manner shall provide copies of this record to the members of the advisory council created in this section and those legislators, or their designees, who may attend meetings of the advisory council. The board shall provide copies of this record in the solicitation of bids for the administration or servicing of the self-insured program. Each person, agent or corporation that, during the previous fiscal year, has assisted in the development of the plan or employed or compensated any person who assisted in the development of the plan, and that bids on the administration or servicing of the plan, shall submit to the board a statement accompanying the bid explaining in detail its participation with the development of the plan. This statement shall include the amount of compensation paid by the bidder to any such employee during the previous fiscal year. The board shall make all such information available to the members of the advisory council and those legislators, or their designees, who may attend meetings of the advisory council before any action is taken by the board on the bids submitted. The failure of any bidder to fully and accurately comply with this paragraph shall result in the rejection of any bid submitted by that bidder or the cancellation of any contract executed when the failure is discovered after the acceptance of that bid. The board is authorized to promulgate rules and regulations to implement the provisions of this subsection.

The board shall develop plans for the insurance plan authorized by this section in accordance with the provisions of Section 25-15-5.

Any corporation, association, company or individual that contracts with the board for the third-party claims administration of the self-insured plan shall prepare and keep on file an explanation of benefits for each claim processed. The explanation of benefits shall contain such information relative to each processed claim that the board deems necessary, and, at a minimum, each explanation shall provide the claimant's name, claim number, provider number, provider name, service dates, type of services, amount of charges, amount allowed to the claimant and reason codes. The information contained in the explanation of benefits shall be available for inspection upon request by the board. The board shall have access to all claims information utilized in the issuance of payments to employees and providers.

(b) There is created an advisory council to advise the board in the formulation of the State and School Employees Health Insurance Plan. The council shall be composed of the State Insurance Commissioner, or his designee, an employee-representative of the institutions of higher learning appointed by the board of trustees thereof, an employee-representative of the Department of Transportation appointed by the director thereof, an employee-representative of the Department of Revenue appointed by the Commissioner of Revenue, an employee-representative of the Mississippi Department of Health appointed by the State Health Officer, an employee-representative of the Mississippi Department of Corrections appointed by the Commissioner of Corrections, and an employee-representative of the Department of Human Services appointed by the Executive Director of Human Services, two (2) certificated public school administrators appointed by the State Board of Education, two (2) certificated classroom teachers appointed by the State Board of Education, a noncertificated school employee appointed by the State Board of Education and a community/junior college employee appointed by the Mississippi Community College Board.

The Lieutenant Governor may designate the Secretary of the Senate, the Chairman of the Senate Appropriations Committee, the Chairman of the Senate Education Committee and the Chairman of the Senate Insurance Committee, and the Speaker of the House of Representatives may designate the Clerk of the House, the Chairman of the House Appropriations Committee, the Chairman of the House Education Committee and the Chairman of the House Insurance Committee, to attend any meeting of the State and School Employees Insurance Advisory Council. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend the meetings of the council.

Those designees shall have no jurisdiction or vote on any matter within the jurisdiction of the council. For attending meetings of the council, the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the council will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the council without prior approval of the proper committee in their respective houses.

(c) No change in the terms of the State and School Employees Health Insurance Plan may be made effective unless the board, or its designee, has provided notice to the State and School Employees Health Insurance Advisory Council and has called a meeting of the council at least fifteen (15) days before the effective date of the change. If the State and School Employees Health Insurance Advisory Council does not meet to advise the board on the proposed changes, the changes to the plan shall become effective at such time as the board has informed the council that the changes shall become effective.

(d) **Medical benefits for retired employees and dependents under age sixty-five (65) years and not eligible for Medicare benefits.** —For employees who retire before July 1, 2005, and for employees retiring due to work-related disability under the Public Employees' Retirement System, the same health insurance coverage as for all other active employees and their dependents shall be available to retired employees and all dependents under age sixty-five (65) years who are not eligible for Medicare benefits, the level of benefits to be the same level as for all other active participants. For employees who retire on or after July 1, 2005, and not retiring due to work-related disability under the Public Employees' Retirement System, the same health insurance coverage as for all other active employees and their dependents shall be available to those retiring employees and all dependents under age sixty-five (65) years who are not eligible for Medicare benefits only if the retiring employees were participants in the State and School Employees Health Insurance Plan for four (4) years or more before their retirement, the level of benefits to be the same level as for all other active participants. This section will apply to those employees who retire due to one hundred percent (100%) medical disability as well as those employees electing early retirement.

(e) **Medical benefits for retired employees and dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits.** — For employees who retire before July 1, 2005, and for employees retiring due to work-related disability under the Public Employees' Retirement System, the health insurance coverage available to retired employees over age sixty-five (65) years or otherwise eligible for Medicare benefits, and all dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits, shall be the major medical coverage. For employees retiring on or after July 1, 2005, and not retiring due to work-related disability under the

Public Employees' Retirement System, the health insurance coverage described in this paragraph (e) shall be available to those retiring employees only if they were participants in the State and School Employees Health Insurance Plan for four (4) years or more and are over age sixty-five (65) years or otherwise eligible for Medicare benefits, and to all dependents over age sixty-five (65) years or otherwise eligible for Medicare benefits. Benefits shall be reduced by Medicare benefits as though the Medicare benefits were the base plan.

All covered individuals shall be assumed to have full Medicare coverage, Parts A and B; and any Medicare payments under both Parts A and B shall be computed to reduce benefits payable under this plan.

(f) Lifetime maximum: The lifetime maximum amount of benefits payable under the health insurance plan for each participant is Two Million Dollars ($2,000,000.00).

(2) Nonduplication of benefits – reduction of benefits by Title XIX benefits: When benefits would be payable under more than one (1) group plan, benefits under those plans will be coordinated to the extent that the total benefits under all plans will not exceed the total expenses incurred.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable in accordance with Title XIX of the Social Security Act or under any amendments thereto, or any implementing legislation.

No health care benefits under the state plan shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed insured, or if the insured lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an insured's diagnosis with a terminal condition. As used in this paragraph, "terminal condition" means any aggressive malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which physician diagnoses as terminal.

Benefits for hospital or surgical or medical benefits shall be reduced by any similar benefits payable by workers' compensation.

Not later than January 1, 2016, the state health plan shall not require a higher co-payment, deductible or coinsurance amount for patient-administered anti-cancer medications, including, but not limited to, those orally administered or self-injected, than it requires for anti-cancer medications that are injected or intravenously administered by a health care provider, regardless of the formulation or benefit category determination by the plan. For the purposes of this paragraph, the term "anti-cancer medications" has the meaning as defined in Section 83-9-24.

(3)(a) Schedule of life insurance benefits – group term: The amount of term life insurance for each active employee of a department, agency or institution of the state government shall not be in excess of One Hundred Thousand Dollars ($100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars ($1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars ($30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The plan will further contain a premium waiver provision if a covered employee becomes totally and permanently disabled before age sixty-five (65) years. Employees retiring after June 30, 1999, shall be eligible to continue life insurance coverage in an amount of Five Thousand Dollars ($5,000.00), Ten Thousand Dollars ($10,000.00) or Twenty Thousand Dollars ($20,000.00) into retirement.

(b) Effective October 1, 1999, schedule of life insurance benefits – group term: The amount of term life insurance for each active employee of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver shall not be in excess of One Hundred Thousand Dollars ($100,000.00), or twice the amount of the employee's annual wage to the next highest One Thousand Dollars ($1,000.00), whichever may be less, but in no case less than Thirty Thousand Dollars ($30,000.00), with a like amount for accidental death and dismemberment on a twenty-four-hour basis. The plan will further contain a premium waiver provision if a covered employee of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver becomes totally and permanently disabled before age sixty-five (65) years. Employees of any school district, community/junior college, public library or university-based program authorized under Section 37-23-31 for deaf, aphasic and emotionally disturbed children or any regular nonstudent bus driver retiring after September 30, 1999, shall be eligible to continue life insurance coverage in an amount of Five Thousand Dollars ($5,000.00), Ten Thousand Dollars ($10,000.00) or Twenty Thousand Dollars ($20,000.00) into retirement.

(4) Any eligible employee who on March 1, 1971, was participating in a group life insurance program that has provisions different from those included in this article and for which the State of Mississippi was paying a part of the premium may, at his discretion, continue to participate in that plan. The employee shall pay in full all additional costs, if any, above the minimum program established by this article. Under no circumstances shall any individual who begins employment with the state after March 1, 1971, be eligible for the provisions of this subsection.

(5) The board may offer medical savings accounts as defined in Section 71-9-3 as a plan option.

(6) Any premium differentials, differences in coverages, discounts determined by risk or by any other factors shall be uniformly applied to all active employees participating in the insurance plan. It is the intent of the Legislature that the state contribution to the plan be the same for each employee throughout the state.

(7) On October 1, 1999, any school district, community/junior college district or public library may elect to remain with an existing policy or policies of group life insurance with an insurance company approved by the State and School Employees Health Insurance Management Board, in lieu of participa-

tion in the State and School Life Insurance Plan. On or after July 1, 2004, until October 1, 2004, any school district, community/junior college district or public library may elect to choose a policy or policies of group life insurance existing on October 1, 1999, with an insurance company approved by the State and School Employees Health Insurance Management Board in lieu of participation in the State and School Life Insurance Plan. The state's contribution of up to fifty percent (50%) of the active employee's premium under the State and School Life Insurance Plan may be applied toward the cost of coverage for full-time employees participating in the approved life insurance company group plan. For purposes of this subsection (7), "life insurance company group plan" means a plan administered or sold by a private insurance company. After October 1, 1999, the board may assess charges in addition to the existing State and School Life Insurance Plan rates to such employees as a condition of enrollment in the State and School Life Insurance Plan. In order for any life insurance company group plan to be approved by the State and School Employees Health Insurance Management Board under this subsection (7), it shall meet the following criteria:

(a) The insurance company offering the group life insurance plan shall be rated "A-" or better by A.M. Best state insurance rating service and be licensed as an admitted carrier in the State of Mississippi by the Mississippi Department of Insurance.

(b) The insurance company group life insurance plan shall provide the same life insurance, accidental death and dismemberment insurance and waiver of premium benefits as provided in the State and School Life Insurance Plan.

(c) The insurance company group life insurance plan shall be fully insured, and no form of self-funding life insurance by the company shall be approved.

(d) The insurance company group life insurance plan shall have one (1) composite rate per One Thousand Dollars ($1,000.00) of coverage for active employees regardless of age and one (1) composite rate per One Thousand Dollars ($1,000.00) of coverage for all retirees regardless of age or type of retiree.

(e) The insurance company and its group life insurance plan shall comply with any administrative requirements of the State and School Employees Health Insurance Management Board. If any insurance company providing group life insurance benefits to employees under this subsection (7) fails to comply with any requirements specified in this subsection or any administrative requirements of the board, the state shall discontinue providing funding for the cost of that insurance.

HISTORY:

Codes, 1942, § 5834-135; Laws, 1971, ch. 523, § 5; Laws, 1972, ch. 537, § 2; Laws, 1976, ch. 477, § 1; Laws, 1980, ch. 341, § 1; Laws, 1981, ch. 324, § 1; Laws, 1984, ch. 488, § 145; Laws, 1987, ch. 427; Laws, 1999, ch. 511, § 3; Laws, 2002, ch. 636, § 5; Laws, 2004, ch. 564, § 2; Laws, 2005, 2nd Ex Sess, ch. 106, § 2; Laws, 2008, ch. 560, § 1; brought forward without change, Laws, 2009, ch. 434, § 2; Laws, 2013, ch. 478, § 3; Laws, 2014, ch. 439, § 2; Laws, 2015, ch. 490, § 2; Laws, 2016, ch. 397, § 20, eff from and after July 1, 2016.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Laws of 2014, ch. 411, § 1 provides:

"SECTION 1. (1) The State and School Employees Health Insurance Management Board shall review and study whether to expand coverage currently provided for the treatment of autism spectrum disorders under the State and School Employees Health Insurance Plan. The board may employ or contract for such consulting or actuarial services as may be necessary to evaluate expanding this coverage. In evaluating the coverage, the board may also consider the services for the early intervention and treatment of autism spectrum disorders offered by the public school system under the provision of the Individuals with Disabilities Education Act (IDEA), to facilitate coordination of resources and minimize potential redundancy of benefits.

"(2) On or before December 1, 2014, the board shall submit a report to the Lieutenant Governor, the Speaker of the House of Representatives, and the Chairmen of the House and Senate Insurance Committees regarding expanding coverage in the State and School Employees Health Insurance Plan for the treatment of autism spectrum disorders. The report shall contain the board's analysis, conclusions and recommendations regarding expanding coverage under the plan. The report shall also contain an estimate of the financial impact on the plan due to expanding the coverage."

Cross References —

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Withdrawals from State Employees Life and Health Insurance Plan prohibited, see § 25-15-23.

Prohibition against health coverage plan restricting medically appropriate treatment prescribed by physician based on insured's diagnosis with terminal condition, see 83-9-22.

Regulation of Medicare supplement insurance, see §§ 83-9-101 et seq.

Federal Aspects—

Title XIX of the Social Security Act, see 42 USCS §§ 1396 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The State and School Employees Health Insurance Management Board is required to design a plan of health insurance for all employees (as defined in § 25-15-3) that provides hospitalization and major medical benefits. Benefits contained within the plan may be provided through a contract or contracts of insurance or through a self-insured program. In addition to these benefits, the Board may make available, at the option of the employees, alternate coverage and optional benefits by way of a contract or contracts of insurance. 2005 Miss. Op. Att'y Gen. 30.

RESEARCH REFERENCES

ALR.

Group insurance: construction of provision limiting coverage to full time employees. 57 A.L.R.3d 801.

Group Insurance: construction of provision limiting coverage to active employees or to persons working actively in conduct of business. 58 A.L.R.3d 993.

Construction of provision in health or accident policy extending coverage to persons "actually in the employ of" the policyholder. 64 A.L.R.3d 1178.

§ 25-15-11. Contracts of insurance; self insurance; contracts for administration of plan; reports, reviews and audits.

(1) The board is authorized to execute a contract or contracts to provide the benefits under the plan. Such contract or contracts may be executed with one or more corporations or associations licensed to transact life and accident

and health insurance business in this state; however, no such contract shall be executed with any corporation, association or company domiciled in any other state except that such corporation, association or company shall meet the conditions and terms for a like contract established by the state of the domicile of such corporation, association or company for a Mississippi corporation, association or company. No corporation, association or company with less than five (5) years' experience in the life and health field may bid. All of the benefits to be provided under the plan may be included in one or more similar contracts, or the benefits may be classified into different types with each type included under one or more similar contracts issued by the same or different companies.

The board shall supply the statistical information upon which a quotation is to be calculated, upon request, to all carriers licensed in the state. Bids may be accepted at the discretion of the board, and the board shall have the right to adjust rates on an annual basis if the board shall deem such adjustment necessary. The plan for active employees shall be on retention accounting basis, and a separate retention accounting basis shall be used for retired employees. Any additional written information the carrier wishes to submit, supporting the proposed benefits and premium rate, may accompany the proposal. After receiving the proposals, the board shall determine whether to contract with the carrier which has been determined to have submitted the lowest and best bid, or to reject all such bids and receive new proposals.

The board shall authorize any corporation licensed to transact accident and health insurance business in this state issuing any such contract to reinsure portions of such contract with any other such corporation which elected to be a reinsurer and is legally competent to enter into a reinsurance agreement. The board may designate one or more of such corporations as the administering corporation or corporations. Each employee who is covered under any such contract or contracts shall receive a certificate setting forth the benefits to which the employee is entitled thereunder, to whom such benefits shall be payable, to whom claims should be submitted, and summarizing the provisions of the contract principally affecting the employee. Such certificate shall be in lieu of the certificate which the corporation or corporations issuing such contract or contracts would otherwise issue.

The board may, as of the end of any contract year, discontinue any contract or contracts it has executed with any corporation or corporations and replace it or them with a contract or contracts in any other corporation or corporations meeting the requirements of this section.

The board may reject any and all bids and contracts under this section and may elect for the state to become a self-insurer; however, administration and service of any such self-insured program may be contracted to a third party by the board.

Any contract with a third party to administer the plan shall be bid and entered into in accordance with the procedures provided in Section 25-15-301.

(2) By September 30 of each year, the board shall report to the Joint Legislative Budget Committee, Senate Insurance Committee, House Insurance Committee, Senate Education Committee, House Education Committee

and Joint Legislative Committee on Performance Evaluation and Expenditure Review the condition of the State and School Employees Life and Health Insurance Plan. Such report shall contain for the most recently completed fiscal year, but not be limited to, the following:

(a) The plan's financial condition at the close of the fiscal year.

(b) The history of yearly claims paid and premiums received for each premium class, including, but not limited to, active employees, dependents and retirees.

(c) The history of loss ratios for the active employees, dependents and retirees premium classes as well as historical trend of such ratios. For the purposes of this section, the term "loss ratios" means claims paid by the plan for each premium class divided by premiums received by the plan for insurance coverage of the members in that premium class.

(d) Budgetary information, including:

(i) A detailed breakdown of all expenditures of the plan, administrative and otherwise, for the most recently completed fiscal year and projected expenditures, administrative and otherwise, for the current and next fiscal year;

(ii) A schedule of all contracts, administrative and otherwise, executed for the benefit of the plan during the most recent completed fiscal year and those executed and anticipated for the current fiscal year; and

(iii) A description of the processes used by the board to procure all contracts, administrative and otherwise, as well as a description of the scope of services to be provided by each contractor.

Budgetary information shall be provided in a format designated by the Joint Legislative Budget Committee.

The Joint Legislative Budget Committee, Senate Insurance Committee, House Insurance Committee, Senate Education Committee, House Education Committee and Joint Legislative Committee on Performance Evaluation and Expenditure Review may request additional information or reports from the board on an as-needed basis.

(3) Annually, the board shall request, and the Department of Audit shall conduct, a comprehensive audit of the State and School Employees Life and Health Insurance Plan. For purposes of this section, the audit required herein shall be separate and distinct from any audit prepared in conjunction with the development of the Comprehensive Annual Financial Report (CAFR).

HISTORY:

Codes, 1942, § 5834-136; Laws, 1971, ch. 523, § 6; Laws, 1972, ch. 527, § 3; Laws, 1976, ch. 477, § 2; Laws, 1977, ch. 494, § 1; Laws, 1980, ch. 341, § 2; Laws, 1984, ch. 488, § 146; Laws, 1992, ch. 568 § 3; Laws, 1994, ch. 615, § 6; Laws, 1995, ch. 554, § 4; Laws, 1999, ch. 511, § 4; Laws, 2002, ch. 636, § 6; Laws, 2016, ch. 397, § 21, eff from and after July 1, 2016.

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References —

Withdrawals from State Employees Life and

Health Insurance Plan prohibited, see § 25-15-23.

State fiscal management board (now the department of finance and administration), generally, see §§ 27-104-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The State and School Employees Health Insurance Management Board is required to design a plan of health insurance for all employees (as defined in § 25-15-3) that provides hospitalization and major medical benefits. Benefits contained within the plan may be provided through a contract or contracts of insurance or through a self-insured program. In addition to these benefits, the Board may make available, at the option of the employees, alternate coverage and optional benefits by way of a contract or contracts of insurance. 2005 Miss. Op. Att'y Gen. 30.

RESEARCH REFERENCES

ALR.

Effective date of group life insurance as to individual policies of employees. 66 A.L.R.3d 1175.

Medical Care Insurance: right of insured under individual policy to coverage afforded by group policy from which he directly transferred on termination of his employment. 66 A.L.R.3d 1192.

Group insurance: binding effects of limitations on or exclusions of coverage contained in master group policy but not in literature given individual insureds. 6 A.L.R.4th 835.

§ 25-15-13. Eligibility.

Each eligible employee may participate in the plan by signing up for the plan at the time of employment. Each eligible employee who declines coverage under the plan must sign a waiver of coverage. After acceptance in the plan, the employee may cease his or her participation by filing a specific disclaimer with the board. Forms for this purpose shall be prescribed and issued by the board. All eligible employees will be eligible to participate in the plan on the effective date of the plan or on the date on which they are employed by the state, whichever is later, provided they make the necessary contributions as provided in this article. Spouses of employees, unmarried dependent children from birth to age nineteen (19) years, unmarried dependent children who are full-time students up to age twenty-five (25) years, and physically or mentally handicapped children, regardless of age, are eligible under the plan as of the date the employee becomes eligible. If both spouses are eligible employees who participate in the plan, the benefits shall apply individually to each spouse by virtue of his or her participation in the plan. If those spouses also have one or more eligible dependents participating in the plan, the cost of their dependents shall be calculated at a special family plan rate. The cost for participation by the dependents shall be paid by the spouse who elects to carry such dependents under his or her coverage.

HISTORY:

Codes, 1942, § 5834-137; Laws, 1971, ch. 523, § 7; Laws, 1972, ch. 537, § 4; Laws, 1984, ch. 488, § 147; Laws, 1999, ch. 511, § 5, eff from and after July 1, 1999.

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References —

State fiscal management board (now the department of finance and administration), generally, see §§ 27-104-1 et seq.

RESEARCH REFERENCES

ALR.

Group Insurance: construction of provision limiting coverage to full time employees. 57 A.L.R.3d 801.

Event as occurring within period of coverage of "occurrence" and "discovery" or "claims made" liability policies. 37 A.L.R.4th 382.

§ 25-15-14. Elected state or district officials; participation in plans after leaving office.

Any elected state or district official who does not run for reelection or who is defeated before being entitled to receive a retirement allowance shall be eligible to continue to participate in the State and School Employees Health Insurance Plan under the same conditions and coverages for retired employees.

HISTORY:

Laws, 1990, ch. 375, § 1; Laws, 1999, ch. 511, § 6; Laws, 2002, ch. 636, § 7; Laws, 2016, ch. 397, § 22, eff from and after July 1, 2016.

§ 25-15-15. Payment of premiums; active full-time employees assessed portion of active employee premium under certain circumstances; purchase of additional coverage; late charges and interest penalties; State Employees Insurance Fund; Insurance Reserve Fund [Repealed effective July 1, 2022].

(1) The board is authorized to determine the manner in which premiums and contributions by the state agencies, local school districts, colleges, universities, community/junior colleges and public libraries shall be collected to provide the self-insured health insurance program for employees as provided under this article. The state shall provide fifty percent (50%) of the cost of the above life insurance plan for all active full-time employees. The state shall provide one hundred percent (100%) of the cost of the health insurance plan for active full-time employees initially employed before January 1, 2006, except as otherwise provided in this section. For active full-time employees initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance, except as otherwise provided in this section, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. The board, if determined to be necessary, may assess active full-time employees a portion of the active employee premium in an amount not to exceed Twenty Dollars ($20.00) per month, notwithstanding any language in this section to the contrary. All active full-time employees shall be given the opportunity to purchase coverage for their eligible dependents with the

premiums for such dependent coverage, as well as the employee's fifty percent (50%) share for his life insurance coverage, to be deductible from the employee's salary by the agency, department or institution head, which deductions, together with the fifty percent (50%) share of such life insurance premiums of such employing agency, department or institution head from funds appropriated to or authorized to be expended by the employing agency, department or institution head, shall be deposited directly into a depository bank or special fund in the State Treasury, as determined by the board. These funds and interest earned on these funds may be used for the disbursement of claims and shall be exempt from the appropriation process.

(2) The state shall provide annually, by line item in the Mississippi Library Commission appropriation bill, such funds to pay one hundred percent (100%) of the cost of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for full-time library staff members in each public library in Mississippi initially employed before January 1, 2006. For full-time library staff members initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. The commission shall allot to each public library a sufficient amount of those funds appropriated to pay the costs of insurance for eligible employees. Any funds so appropriated by line item which are not expended during the fiscal year for which such funds were appropriated shall be carried forward for the same purposes during the next succeeding fiscal year. If any premiums for the health insurance and/or late charges and interest penalties are not paid by a public library in a timely manner, as defined by the board, the Mississippi Library Commission, upon notice by the board, shall immediately withhold all subsequent disbursements of funds to that public library.

(3) The state shall annually provide one hundred percent (100%) of the cost of the health insurance plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for public school district employees who work no less than twenty (20) hours during each week and regular nonstudent school bus drivers, if such employees and school bus drivers were initially employed before January 1, 2006. For such employees and school bus drivers initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan. Where federal funding is allowable to defray, in full or in part, the cost of participation in the program by district employees who work no less than twenty (20) hours during the week and regular nonstudent bus drivers, whose salaries are paid, in full or in part, by

federal funds, the allowance under this section shall be reduced to the extent of such federal funding. Where the use of federal funds is allowable but not available, it is the intent of the Legislature that school districts contribute the cost of participation for such employees from local funds, except that parent fees for child nutrition programs shall not be increased to cover such cost.

(4) The state shall provide annually, by line item in the community/junior college appropriation bill, such funds to pay one hundred percent (100%) of the cost of the health insurance plan, or any lesser percentage of the cost that is not assessed to the employees by the board, for community/junior college district employees initially employed before January 1, 2006, who work no less than twenty (20) hours during each week. For such employees initially employed on or after January 1, 2006, the state shall provide one hundred percent (100%) of the cost of a basic level of health insurance under the State and School Employees Health Insurance Plan, or any lesser percentage of the cost that is not assessed to the employees by the board, and the employees may pay additional amounts to purchase additional benefits or levels of coverage offered under the plan.

(5) When the use of federal funding is allowable to defray, in full or in part, the cost of participation in the insurance plan by community/junior college district employees who work no less than twenty (20) hours during each week, whose salaries are paid, in full or in part, by federal funds, the allowance under this section shall be reduced to the extent of the federal funding. Where the use of federal funds is allowable but not available, it is the intent of the Legislature that community/junior college districts contribute the cost of participation for such employees from local funds.

(6) Any community/junior college district may contribute to the cost of coverage for any district employee from local community/junior college district funds, and any public school district may contribute to the cost of coverage for any district employee from nonminimum program funds. Any part of the cost of such coverage for participating employees of public school districts and public community/junior college districts that is not paid by the state shall be paid by the participating employees, which shall be deducted from the salaries of the employees in a manner determined by the board.

(7) Any funds appropriated for the cost of insurance by line item in the community/junior colleges appropriation bill which are not expended during the fiscal year for which such funds were appropriated shall be carried forward for the same purposes during the next succeeding fiscal year.

(8) The board may establish and enforce late charges and interest penalties or other penalties for the purpose of requiring the prompt payment of all premiums for life and health insurance permitted under this chapter. All funds in excess of the amount needed for disbursement of claims shall be deposited in a special fund in the State Treasury to be known as the State and School Employees Insurance Fund. The State Treasurer shall invest all funds in the State and School Employees Insurance Fund and all interest earned shall be credited to the State and School Employees Insurance Fund. Such funds shall be placed with one or more depositories of the state and invested on

the first day such funds are available for investment in certificates of deposit, repurchase agreements or in United States Treasury bills or as otherwise authorized by law for the investment of Public Employees' Retirement System funds, as long as such investment is made from competitive offering and at the highest and best market rate obtainable consistent with any available investment alternatives; however, such investments shall not be made in shares of stock, common or preferred, or in any other investments which would mature more than one (1) year from the date of investment. The board shall have the authority to draw from this fund periodically such funds as are necessary to operate the self-insurance plan or to pay to the insurance carrier the cost of operation of this plan, it being the purpose to limit the amount of participation by the state to fifty percent (50%) of the cost of the life insurance program and not to limit the contracting for additional benefits where the cost will be paid in full by the employee. The state shall not share in the cost of coverage for retired employees.

(9) The board shall also provide for the creation of an Insurance Reserve Fund and funds therein shall be invested by the State Treasurer with all interest earned credited to the State and School Employees Insurance Fund.

(10) Any retired employee electing to purchase retired life and health insurance will have the full cost of such insurance deducted monthly from his State of Mississippi retirement plan check or direct billed for the cost of the premium if the retirement check is insufficient to pay for the premium. If the board determines actuarially that the premium paid by the participating retirees adversely affects the overall cost of the plan to the state, then the board may impose a premium surcharge, not to exceed fifteen percent (15%), upon such participating retired employees who are under the age for Medicare eligibility and who were initially employed before January 1, 2006. For participating retired employees who are under the age for Medicare eligibility and who were initially employed on or after January 1, 2006, the board may impose a premium surcharge in an amount the board determines actuarially to cover the full cost of insurance.

(11) The board may not impose a premium surcharge or any other premium differential upon any class of participant of the plan based on the use or nonuse of tobacco-related products.

(12) This section shall stand repealed on July 1, 2022.

HISTORY:

Codes, 1942, § 5834-138; Laws, 1971, ch. 523, § 8; Laws, 1972, ch. 537, § 5; Laws, 1977, ch. 494, § 2; Laws, 1983, ch. 437; Laws, 1984, ch. 488, § 148; Laws, 1986, ch. 452; Laws, 1991, ch. 506 § 1; Laws, 1993, ch. 393, § 1; Laws, 1993, ch. 533, § 5; Laws, 1994, ch. 615, § 7; Laws, 1999, ch. 511, § 7; Laws, 2002, ch. 636, § 8; Laws, 2005, 2nd Ex Sess, ch. 106, § 1; Laws, 2010, ch. 510, § 1; Laws, 2012, ch. 380, § 1; Laws, 2015, ch. 320, § 1; Laws, 2015, ch. 396, § 1; Laws, 2016, ch. 397, § 23, eff from and after July 1, 2016; Laws, 2018, ch. 314, § 1, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 1 of ch. 320, Laws of 2015, effective from and after July 1, 2015 (approved March 13, 2015), amended this section. Section 1 of ch. 396, Laws of 2015, effective from and after July 1, 2015 (approved March 23, 2015), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 396, Laws of 2015, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date supersedes all other amendments to the same section approved on an earlier date.

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference at the end of the first sentence of (8) was corrected by substituting "...this chapter" for "...Chapter 15 of Title 25."

Amendment Notes —

The 2018 amendment extended the date of the repealer for the section by substituting "July 1, 2022" for "July 1, 2018" in (12).

Cross References —

Payment of full cost of health insurance premiums for certain school bus drivers by public school districts, see § 25-15-16.

OPINIONS OF THE ATTORNEY GENERAL

Section 25-15-15 provides the state shall pay one hundred percent of the cost of the state health insurance plan for all active full time employees. Therefore, the payment of the cost of premiums on the state health insurance plan for active full time employees is a continuing obligation of the state, separate and independent from the benefits afforded through workers' compensation. 1995 Miss. Op. Att'y Gen. 517.

§ 25-15-16. Public school districts may use local funds to pay full cost of health insurance premiums for certain school bus drivers.

The public school districts of the state, in their discretion, may pay with local funds one hundred percent (100%) of the cost of the health insurance premiums of the State and School Employees Health Insurance Plan for all retired members of the Public Employees' Retirement System who are employed as school bus drivers by the school districts. No state funds shall be used for payment of the health insurance premiums under the authority of this section. If a school district chooses to pay the health insurance premiums for school bus drivers under the authority of this section, the district shall be authorized to pay any amount that is one hundred percent (100%) or less of the cost of the health insurance premiums for the school bus drivers.

HISTORY:

Laws, 2007, ch. 523, § 3, eff from and after July 1, 2007.

Cross References —

Payment of premiums by state agencies, local school districts, etc., see § 25-15-15.

§ 25-15-17. Payment of benefits.

(1) Any benefits payable under the plan may be made either directly to the attending physicians, hospitals, medical groups, or others furnishing the services upon which a claim is based, or to the covered employee, upon presentation of valid bills for such services, subject to subsection (3) of this section and such provisions to facilitate payment as may be made by the board. All benefits payable under this plan shall be payable directly to the covered employee unless such covered employee shall make a valid assignment in accordance with subsection (3) of this section.

(2) The plan may not, by its terms, limit or restrict the covered employee's ability to assign the covered employee's benefits under the policy to a licensed health care provider that provides health care services to the covered employee. Any such plan provision in violation of this subsection shall be invalid.

(3) If the covered employee provides the board with written direction that all or a portion of any indemnities or benefits provided by the plan be paid to a licensed health care provider rendering hospital, nursing, medical or surgical services, then the plan shall pay directly the licensed health care provider rendering such services. That payment shall be considered payment in full to the provider, who may not bill or collect from the covered employee any amount above that payment, other than the deductible, coinsurance, copayment or other charges for equipment or services requested by the covered employee that are noncovered benefits after the signing of an explanatory document about the noncovered benefit by the covered employee.

HISTORY:
Codes, 1942, § 5834-139; Laws, 1971, ch. 523, § 9; Laws, 1984, ch. 488, § 149; Laws, 2014, ch. 341, § 1, eff from and after July 1, 2014.

Editor's Notes —
Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 25-15-19. Notification of commencement of payroll deductions.

On or before July 1, 1972, the board shall notify all department, agency and institution heads that the employee deductions shall commence on said date.

HISTORY:
Codes, 1942, § 5834-140; Laws, 1971, ch. 523, § 10; Laws, 1984, ch. 488, § 150, eff from and after July 1, 1984.

§ 25-15-21. Repealed.

Repealed by Laws, 1992, ch. 568, § 5, eff from and after passage (approved May 15, 1992).

[Codes, 1942, § 5834-141; Laws, 1971, ch. 523, § 13; 1972, ch. 537, § 6; 1977, ch. 494, § 3; 1984, ch. 488, § 151, eff from and after July 1, 1984.]

Editor's Notes —
Former Section 25-15-21 authorized the Board of Trustees of State Institutions of Higher Learning to establish a separate group plan for the institutions.

§ 25-15-23. Withdrawals from State Employees Life and Health Insurance Plan prohibited.

No agency, board, school district, community/junior college, public library, university, institution or authority of the state shall withdraw, or authorize any agency or institution under its management and control to withdraw, from the State and School Employees Life and Health Insurance Plan established under this chapter.

HISTORY:
Laws, 1992, ch. 568 § 2; Laws, 1999, ch. 511, § 8, eff from and after July 1, 1999.

Editor's Notes —
At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference at the end of the section was corrected by substituting "...this chapter" for "...Title 25, Chapter 15, Mississippi Code of 1972."

§ 25-15-25. Repealed.

Repealed by its own terms, effective July 1, 2012.

§ 25-15-25. [Laws, 2009, ch. 434, § 1, eff from and after July 1, 2009.]

Editor's Notes —
Former § 25-15-25 created a program for the treatment and management of obesity and related conditions and established criteria for patient and facility program eligibility.

ARTICLE 3.

GROUP INSURANCE FOR EMPLOYEES OF LOCAL GOVERNMENTS AND THEIR INSTITUTIONS AND AGENCIES.

Sec.

25-15-101. Administration of insurance program; self-insurance; liability for payment of benefits and loss or misappropriation of funds.

25-15-103. Amount of coverage.

25-15-105. Exception for school district employees in federally impacted areas.

§ 25-15-101. Administration of insurance program; self-insurance; liability for payment of benefits and loss or misappropriation of funds.

The governing board of any county, municipality, municipal separate school district, other school district or community/junior college district, and the governing board or head of any institution, department or agency of any county or municipality may negotiate for and secure for all or specified groups of employees and their dependents of such county or municipality, or institution, department or agency of such county or municipality, or municipal separate school district, other school district or community/junior college district, a policy or policies of group insurance covering the life, except as hereinafter provided, salary protection, health, accident and hospitalization, as well as a group contract or contracts covering hospital and/or medical and/or surgical services or benefits (including surgical costs, so-called "hospital extras," medical expenses, allied coverages and major medical costs) of such of its employees and their dependents as may desire such insurance and other coverage under such service or benefit contracts, and who shall authorize in writing the deduction from the salary or wages of such employees of the proportionate part of the costs thereof attributable to such employees. However, beginning with the 1984-1985 school year, school districts shall provide the policies of group insurance to certificated personnel. Any employee who desires to reallocate or reduce any part of his or her salary or wages for a cafeteria fringe benefit plan in accordance with current requirements of Section 125 et seq. of the Internal Revenue Code for himself or herself and/or for his or her dependent(s) shall authorize, in writing, the deduction from the salary or wages of such employee the proportionate part of the costs thereof attributable to such employee. Any amount so deducted shall be transferred into the general fund or contingent fund of such county or municipality, or the operating fund of such institution, department or agency of the county or municipality, or the maintenance fund of such municipal separate school district, other school district or community/junior college district, as the case may be, and shall be supplemented by funds from the general fund, contingent fund, maintenance fund or operating fund, as the case may be, in an amount to be determined by the governing board or head of such political subdivision, school district, community/junior college district, institution, department or agency, in their discretion, in order to pay the full costs. In no instances shall the amount of contributions by any governing board or head of a political subdivision, school district, community/junior college district, institution, department or agency hereinabove mentioned exceed an average of one hundred percent (100%) of the cost of all such group coverages for employees.

The governing board or head of such political subdivision, school district, community/junior college district, institution, department or agency is authorized to pay such full costs direct to the insurance company and to the hospital and/or medical and/or surgical service association from the general fund, contingent fund, or the maintenance fund of such county or municipality, or the operating fund of such institution, department, or agency of the county or municipality, or the maintenance fund of such municipal separate school district, other school district or community/junior college district, as the case may be, and to do all acts necessary and proper for the purpose of carrying out the provisions of this section and Section 25-15-103 and of effectuating the purposes hereof. The rates for any and all costs covered by the sections shall be in keeping with promulgated schedules, and the rates for such costs shall be approved by the Insurance Commissioner of the State of Mississippi. This section shall not be construed to prevent changes in rates based on experience, nor the granting of dividends or rate reductions or credits.

The governing board or head of any political subdivision or other entity set forth in this section may elect to become a self-insurer with respect to all or any portion of group life, salary protection, health, accident and hospitalization benefits on terms and conditions deemed advisable, in its discretion. The administration and service of any such self-insurance program shall be contracted to a third party approved by the Commissioner of Insurance and benefits provided in excess of the self-insurance plan shall be covered by a policy or policies of group insurance or a group contract or contracts issued by a company licensed to do business in this state.

The governing board of any political subdivision or other entity set forth in this section may join with any one or more other such political subdivision or entity to pool the risks authorized to be insured or self-insured under this section or to act as a self-insurer, or to contract for a policy or policies of insurance, or to contract with a third-party administrator for a self-insurance plan.

Any political subdivision or other entity that provides any plan of group insurance or other coverage under this section does not waive, but expressly reserves, its sovereign immunity under the laws of the State of Mississippi; and all plans and agreements executed by political subdivisions and other entities providing insurance or other coverage under this section shall contain a provision expressly limiting liability for the payment of all benefits for single or multiple claims to the extent of the insurance carried or to the extent of funds available under the self-insurance fund.

Nothing in this section and Section 25-15-103 shall be construed to apply to agencies financed entirely by federally granted administrative funds.

Any governing board or head of any political subdivision or other entity that provides any plan of group insurance or other coverage under this section, and any person with whom such governing board, head of a political subdivision or other entity contracts in the performance of any duty or authority prescribed under this section, shall be liable civilly for the loss or misappropriation of any public funds resulting from their failure to comply with any provision of this section, such funds to be recovered in the manner provided under Section 7-7-211.

HISTORY:

Codes, 1942, § 5649; Laws, 1940, ch. 141; Laws, 1950, ch. 417, § 3; Laws, 1956, ch. 335, § 2; Laws, 1958, ch. 435, § 3; Laws, 1962, ch. 454, §§ 3, 4; Laws, 1964, ch. 469, §§ 2, 3 [subs. 1, 2]; Laws, 1966, ch. 521, § 2; Laws, 1968, ch. 477, §§ 1-4; Laws, 1970, ch. 447, § 1; Laws, 1970, ch. 448, § 1; Laws, 1971, ch. 523, § 15; Laws, 1971, ch. 523, § 14; Laws, 1974, ch. 535, § 1; Laws, 1977, ch. 496, § 1; Laws, 1982, ch. 362, § 2; Laws, 1982, Ex Sess, ch. 17, § 28; Laws, 1985, ch. 466, § 2; Laws, 1986, ch. 477; Laws, 1988, ch. 460, § 1; Laws, 1991, ch. 558, § 10; Laws, 1991, ch. 566, § 1; Laws, 1995, ch. 492, § 1; Laws, 2009, ch. 439, § 1; Laws, 2015, ch. 365, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the second and sixth paragraphs of this section. The reference to "Sections 25-15-101 and 25-15-103" was changed to "this section and Section 25-15-103." The Joint Committee ratified the correction at its August 14, 2018, meeting.

Cross References —

Group insurance for school district employees and exceptions applying to federally impacted areas, see § 25-15-105.

Federal Aspects—

For provisions of Section 125 et seq. of the Internal Revenue Code, see 26 USCS §§ 125 et seq.

JUDICIAL DECISIONS

1. In general.

In absence of any apparent rationale why the definition of "employee" should be different in case of county and local employees, the definition of "employee" in § 25-15-3(a), even though strictly speaking applicable to only statutes relating to health and life insurance for state employees, nevertheless exerts an electromagnetic force determinative of the issue as to whether deputy chancery clerks and deputy circuit clerks are "employees" within the meaning of § 25-15-101. Warren County v. Culkin, 497 So. 2d 433, 1986 Miss. LEXIS 2747 (Miss. 1986).

During the period from 1982 to 1984, county board of supervisors, by virtue of § 25-15-101, had lawful authority to obtain group life, medical and accident insurance for the benefit of county employees and to include within the employee so benefited deputy chancery clerks and deputy circuit clerks and to pay the premiums for such insurance out of general county funds. Warren County v. Culkin, 497 So. 2d 433, 1986 Miss. LEXIS 2747 (Miss. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Although counties are specifically authorized to purchase group insurance policies for employees and dependents covering life, salary protection, health, accident and hospitalization, and hospital and/or medical and/or surgical services or benefits, there is no apparent authority for county to make loans to employees from county self-insurance fund. 1992 Miss. Op. Att'y Gen. 632.

Although municipalities may obtain health insurance and other kinds of insurance for employees and their dependents, there is apparently no authority for municipality to provide health insurance for individuals such as Chamber of Commerce members who are not employees of city and who reimburse municipality for amount of their premiums. 1992 Miss. Op. Att'y Gen. 835.

Although counties and cities are without authority to provide specific types of insurance set forth in Section 25-15-101 to volunteer firefighters, tort risk coverage may be provided under Section 11-46-1. 1994 Miss. Op. Att'y Gen. 80.

County board of supervisors is authorized in its discretion to provide insurance coverage pursuant to and in accordance with Mississippi Code Annotated Sections 25-15-101 and 25-15-103 for county election commissioners. 1994 Miss. Op. Att'y Gen. 130.

Pursuant to Section 25-15-101, a school board has the authority in its discretion to provide term life insurance for its employees as a fringe benefit; the amount of coverage allowed is governed by Section 25-15-103. 1995 Miss. Op. Att'y Gen. 804.

Municipal governing authorities in their discretion may pay a police officer who has health insurance from another source a salary which encompasses the base pay for the position of police officer and the amount which the town pays for the health insurance premium for a municipal employee. See Sections 25-15-101, 25-15-103 and 21-3-5. 1996 Miss. Op. Att'y Gen. 91.

Section 25-15-101 provides that municipalities may negotiate for and secure policies of group insurance covering all or specified groups of the employees and their dependents. 1996 Miss. Op. Att'y Gen. 501.

A county has discretion to provide group medical and health insurance to its coroner, but it is not required to do so. 1997 Miss. Op. Att'y Gen. 428.

A municipality may not act as the administrator of its own self-funded health insurance program. 1998 Miss. Op. Att'y Gen. 283.

Before the governing authorities of a municipality may pay claims for medical expenses by employees or dependents, they must establish the municipality as a self insurer by order on the minutes and must set forth the specific terms and conditions of the contract for insurance between the city and the employees; the governing authorities do not have authority to pay claims for medical expenses of employees unless the city is a self insurer with the terms and conditions of the insurance coverage set forth in the minutes. 1999 Miss. Op. Att'y Gen. 592.

A county board of supervisors may establish a group composed of the elected officials of the county, or include such officials in an existing group, and in either event, pay the premiums for dependent health insurance coverage for such group. Lee, Jr., 2000 Miss. Op. Att'y Gen. 125.

A county board of supervisors may establish a group composed of the elected officials of the county, or include such officials in an existing group, and in either event, pay the premiums for dependent health insurance coverage for such group after deducting the amounts necessary to pay the costs of such dependent health coverage. Lee, Jr., 2000 Miss. Op. Att'y Gen. 125.

A municipality may elect to provide group health insurance for its employees and dependents and may pay the full costs of all such benefits. 2000 Miss. Op. Att'y Gen. 313.

The statute only refers to what types of policies may be procured by a municipality on behalf of its employees, and does not affect what types of coverage the employees may obtain on their own behalf; cancer policies are clearly contemplated within the meaning of health policies, and disability coverage protecting an employee's salary and other expenses is authorized. 2001 Miss. Op. Att'y Gen. 204.

There is no authority for governing authorities of municipalities to require that all city employees pay a certain percentage of their salaries in order to be included in a group insurance policy, rather than paying the employees' proportionate part of the premiums according to the rates set in the contract negotiated by the municipality with the insurance carrier pursuant to the statute. 2001 Miss. Op. Att'y Gen. 550.

There is no requirement for self-insured public entities to carry any sort of reinsurance. 2002 Miss. Op. Att'y Gen. 526.

The provisions of this article governing group insurance for employees of local governments and their institutions and agencies are not governed by the definition of "employee" as found in § 25-15-3(a). Such local employers may adopt their own leave policies and contract for group insurance, through which they may provide for payment of health insurance premiums for employees who are off work due to a work-related injury. 2004 Miss. Op. Att'y Gen. 699.

A law firm retained by a municipality in accordance with § 21-15-27 is not an "employee" of the municipality and therefore members of the firm and their dependents are not eligible for the health insurance coverage specified in this section and § 25-15-103. 2004 Miss. Op. Att'y Gen. 440.

A county board of supervisors is authorized, but is not required to provide insurance coverage for all county and county district officers and employees, including election commissioners, pursuant to this section and § 25-15-103. 2004 Miss. Op. Att'y Gen. 442.

A board of supervisors may make a payment or temporary transfer from the general fund to the claims pool in order to make timely payment of any claims covered by the county health plan, whether such claims relate to employee coverage, dependent coverage or coverage required by COBRA. 2005 Miss. Op. Att'y Gen. 630.

A municipality may modify its current major medical insurance plan to authorize participation by only those dependents who do not have primary coverage through their own place of employment. 2005 Miss. Op. Att'y Gen. 574.

RESEARCH REFERENCES

ALR.

Group insurance: Waiver or estoppel on basis of statements in promotional or explanatory literature issued to insureds. 36 A.L.R.3d 541.

§ 25-15-103. Amount of coverage.

The maximum amount of group insurance or other coverage used in determining employer's limitation of one hundred percent (100%) of such costs shall be determined by regulations promulgated by the governing board or head of any political subdivision, school district, junior college district, institution, department or agency named in Section 25-15-101 and this section, but the life insurance for each employee shall not exceed Fifty Thousand Dollars ($50,000.00), or the amount of deduction allowed by the United States Internal Revenue Service in filing a federal tax return, whichever is greater. A like amount may be for accidental death; accident, health and salary protection insurance, providing benefits not exceeding sixty percent (60%) of the employee's income, or the amount allowed by the United States Internal Revenue Service in filing a federal tax return, whichever is greater. Hospitalization benefits for room and board may not exceed the average semiprivate cost per day; and the other coverages authorized hereinabove. The limitations in this paragraph on the amount of group insurance and other coverage which employers may obtain for their employees shall not be applicable to municipalities.

Any employee who retires due to one hundred percent (100%) medical disability, or due to reaching the statutory age of retirement under the provisions of the Public Employees' Retirement Law of 1952, being Sections 25-11-101 through 25-11-139, may, if he elects, remain a member of the group plan for such life insurance and other benefits as may be agreed to by the governing board or institution, department, or agency head and the companies writing such insurance and other coverage, by paying the entire costs thereof.

When any of the political subdivisions, school districts, junior college districts, institutions, departments, or agencies named in Section 25-15-101 and this section have adopted the group coverage plan authorized by said sections, any of the employees thereof participating in the plan who desire to secure additional benefits for their dependents with the company or companies providing such group coverage may do so by authorizing in writing the deduction from his or her salary or wages of the necessary amounts for the full payment of such additional coverage, and the same may be deducted and paid for such purposes, but the entire cost of such additional coverage for dependents shall be paid by the employee.

Said municipality may provide group life insurance coverage for all or specified groups of its public employees and group hospitalization benefits for such public employees and their dependents, and the municipality may pay the total of the cost of all benefits under this section.

HISTORY:

Codes, 1942, § 5649; Laws, 1958, ch. 435, § 3; Laws, 1962, ch. 454, §§ 3, 4; Laws, 1964, ch. 469, §§ 2, 3 [subs. 1, 2]; Laws, 1966, ch. 521, § 2; Laws, 1968, ch. 477, §§ 1-4; Laws, 1970, ch. 447, § 1; Laws, 1970, ch. 448, § 1; Laws, 1971, ch. 523, § 15; Laws, 1971, ch. 523, § 14, 1973, ch. 460, § 1; Laws, 1974, ch. 535; Laws, 1977, ch. 496, § 2; Laws, 1982, ch. 362, § 1; Laws, 1988, ch. 460, § 2; Laws, 2002, ch. 636, § 9; brought forward without change, Laws, 2015, ch. 365, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the first and third paragraphs of this section. The reference to "Sections 25-15-101 and 25-15-103" was changed to "Section 25-15-101 and this section." The Joint Committee ratified the correction at its August 14, 2018, meeting.

Cross References —

Administration of the insurance program, generally, see § 25-15-101.

Group insurance for school district employees and exceptions applying to federally impacted areas, see § 25-15-105.

OPINIONS OF THE ATTORNEY GENERAL

County board of supervisors is authorized in its discretion to provide insurance coverage pursuant to and in accordance with Mississippi Code Annotated Sections 25-15-101 and 25-15-103 for county election commissioners. 1994 Miss. Op. Att'y Gen. 130.

Pursuant to Section 25-15-101, a school board has the authority in its discretion to provide term life insurance for its employees as a fringe benefit; the amount of coverage allowed is governed by Section 25-15-103. 1995 Miss. Op. Att'y Gen. 804.

Municipal governing authorities in their discretion may pay a police officer who has health insurance from another source a salary which encompasses the base pay for the position of police officer and the amount which the town pays for the health insurance premium for a municipal employee. See Sections 25-15-101 and 21-3-5. 1996 Miss. Op. Att'y Gen. 91.

Municipal employees who retire due to full medical disability or to reaching the statutory retirement age may elect to remain a member of the municipality's group plan for life insurance and other benefits, with the approval of the insurance carrier, by paying the entire costs thereof; there is no authority for the municipality to assume or contribute to the cost of providing life insurance or other benefits on behalf of its employees who retire from municipal employment. 1998 Miss. Op. Att'y Gen. 632.

A municipality may elect to provide group health insurance for its employees and dependents and may pay the full costs of all such benefits. 2000 Miss. Op. Att'y Gen. 313.

Where an employee takes compensatory time for the last several weeks of his employment with a county prior to the effective date of his resignation, the county is precluded from continung to provide insurance benefits during such period. 2001 Miss. Op. Att'y Gen. 102.

As a retired employee choosing to participate in the self insured plan provided by the public utilities commission of a city must bear the full expenses of that coverage, the self insured amount. The commission is not authorized to make expenditures for a retired employee's participation in the self insured plan. 2003 Miss. Op. Att'y Gen. 621.

A law firm retained by a municipality in accordance with § 21-15-27 is not an "employee" of the municipality and therefore members of the firm and their dependents are not eligible for the health insurance coverage specified in this section and § 25-15-101. 2004 Miss. Op. Att'y Gen. 440.

A county board of supervisors is authorized, but is not required to provide insurance coverage for all county and county district officers and employees, including election commissioners, pursuant to § 25-15-101 and this section. 2004 Miss. Op. Att'y Gen. 442.

A city may not fund any portion of the premiums of any retiree opting to participate in the city's health insurance plan. The city may pay the premiums or any portion of the premiums for current employees participating in the plan. 2004 Miss. Op. Att'y Gen. 514.

RESEARCH REFERENCES

ALR.

Group insurance: Waiver or estoppel on basis of statements in promotional or explanatory literature issued to insureds. 36 A.L.R.3d 541.

§ 25-15-105. Exception for school district employees in federally impacted areas.

Notwithstanding the provisions of Sections 25-15-101 and 25-15-103, Mississippi Code of 1972, to the contrary, the board of trustees of municipal separate school districts serving students of regular armed forces parents and other federally employed parents in federally impacted communities, by virtue of contiguous or nearly contiguous regular armed forces bases, may secure any policy or policies of group insurance or other insurance authorized by said sections when at least seventy-five percent (75%) of the employees of the school district (excluding those employees eligible for medical and hospital care from hospitals operated by the United States government) shall agree in writing to participate in such group insurance coverage.

HISTORY:

Codes, 1942, § 5648.5; Laws, 1971, ch. 325, § 1, eff from and after passage (approved February 25, 1971).

OPINIONS OF THE ATTORNEY GENERAL

A county does not have authority to include cases fees earned by a coroner in paying state retirement benefits, but can only pay such benefits based on the part of a coroner's compensation that is not composed of fees. 1997 Miss. Op. Att'y Gen. 428.

ARTICLE 5.

GROUP INSURANCE FOR NATIONAL GUARD.

Sec.
25-15-201. Death and dismemberment coverage for state military personnel.

§ 25-15-201. Death and dismemberment coverage for state military personnel.

The military department is authorized and empowered to procure and pay for group death and dismemberment insurance coverage to protect members of the National Guard and their estates, or their named beneficiaries, to the extent of twenty-five thousand dollars ($25,000.00) per person, if death or dismemberment occurs while performing authorized state military duty. The premiums on such insurance shall be calculated on a man-day basis and coverage shall be in effect only during such duty.

HISTORY:

Codes, 1942, § 8519-89.5; Laws, 1970, ch. 457, § 1; Laws, 1971, ch. 308, § 1; Laws, 1973, ch. 391, § 1, eff from and after passage (approved March 28, 1973).

ARTICLE 7.

GROUP HEALTH INSURANCE PLAN FOR EMPLOYEES OF SCHOOL DISTRICTS AND COMMUNITY/JUNIOR COLLEGE DISTRICTS [REPEALED].

Sec.
25-15-251 through 25-15-265. Repealed.

§§ 25-15-251 through 25-15-265. Repealed.

Repealed by Laws, 1999, ch. 511, § 11, eff from and after July 1, 1999.

§ 25-15-251. [Laws, 1991, ch. 558, § 1; Laws 1993, ch. 533, § 1; Laws 1995, ch. 449, § 1, eff from and after July 1, 1995]

§ 25-15-253. [Laws, 1991, ch. 558, § 2; Laws 1995, ch. 449, § 2, eff from and after July 1, 1995]

§ 25-15-255. [Laws, 1991, ch. 558, § 3; Laws 1993, ch. 533, § 2; Laws 1994, ch. 615, § 2; Laws 1995, ch. 554, § 5; Laws 1996, ch. 491, § 2; Laws 1997, ch. 606, § 2, eff from and after passage (approved April 24, 1997)]

§ 25-15-256. [Laws 1994, ch. 615, § 9, eff from and after July 1, 1994]

§ 25-15-257. [Laws, 1991, ch. 558, § 4, eff from and after passage (approved April 12, 1991)]

§ 25-15-259. [Laws, 1991, ch. 558, § 5, eff from and after passage (approved April 12, 1991)]

§ 25-15-261. [Laws, 1991, ch. 558, § 6; Laws 1993, ch. 533, § 3; Laws 1994, ch. 615, § 3; Laws 1995, ch. 449, § 3, eff from and after July 1, 1995]

§ 25-15-263. [Laws, 1991, ch. 558, § 7; Laws 1993, ch. 533, § 4; Laws 1994, ch. 615, § 4; Laws 1995, ch. 449, § 4, eff from and after July 1, 1995]

§ 25-15-265. [Laws, 1991, ch. 558, § 8, eff from and after passage (approved April 12, 1991)]

Editor's Notes —

Former § 25-15-251 related to definitions. For present provisions, see § 25-15-3.

Former § 25-15-253 related to administration of insurance plan. For present provisions, see § 25-15-5.

Former § 25-15-255 related to administration of plan generally; benefits and coverages generally; advisory council; collection of premiums and contributions; application of premium differentials, etc.; reports to legislature. For present provisions, see § 25-15-9.

Former § 25-15-256 related to the state's paying the cost of insurance for full-time public library staff.

Former § 25-15-257 related to exclusions. For present provisions, see § 25-15-7.

Former § 25-15-259 related to contracts of insurance; reinsurance agreements; issuance of certificates to employees; extension of contracts.

Former § 25-15-261 related to eligibility; participation in plan; payment of premiums. For present provisions, see §§ 25-15-13 through 25-15-15.

Former § 25-15-263 related to assessment of late charges and other penalties; withholding of disbursements; remittance of premiums to department; disposition of premiums remitted to department. For present provisions, see § 25-15-15.

Former § 25-15-265 related to payment of benefits. For present provisions, see § 25-15-17.

ARTICLE 9.

ADMINISTRATION OF GROUP INSURANCE PLANS.

Sec.

25-15-301. Contracts for administration of certain insurance plans; requests for proposals; review and evaluation of proposals; awarding and duration of contract; audits; renewal and termination of contracts; transition between administrators.
25-15-303. State and Public School Employees Health Insurance Management Board.

§ 25-15-301. Contracts for administration of certain insurance plans; requests for proposals; review and evaluation of proposals; awarding and duration of contract; audits; renewal and termination of contracts; transition between administrators.

(1) The board may contract the administration and service of the self-insured program to a third party. Whenever the board chooses to contract with an administrator for the insurance plan established by Section 25-15-3 et seq., it shall comply with the procedures set forth in this section:

(a) If the board determines that it should contract out the administration of the plan to an administrator, it shall cause to be prepared a request for proposals. This request for proposals shall be prepared for distribution to any interested party. Notice of the board's intention to seek proposals shall be published in a newspaper of general circulation at least one (1) time per week for three (3) weeks before closing the period for interested parties to respond. Additional forms of notice may also be used. The newspaper notice shall inform the interested parties of the service to be contracted, existence of a request for proposals, how it can be obtained, when a proposal must be submitted, and to whom the proposal must be submitted. All requests for proposals shall describe clearly what service is to be contracted, and shall fully explain the criteria upon which an evaluation of proposals shall be based. The criteria to be used for evaluations s hall, at minimum, include:

(i) The administrator's proven ability to handle large group accident and health insurance plans;

(ii) The efficiency of the claims-paying procedures;

(iii) An estimate of the total charges for administering the plan.

(b) All proposals submitted by interested parties shall be evaluated by an internal review committee which shall apply the same criteria to all proposals when conducting an evaluation. The committee shall consist of at least three (3) members of the board. The results and recommendations of the evaluation shall be presented to the board for review. All evaluations presented to the board shall be retained by the board for at least three (3) years. The board may accept or reject any recommendation of the review committee, or it may conduct further inquiry into the proposals. Any further inquiry shall be clearly documented and all methods and recommendations shall be retained by the board and shall spread upon its minutes its choice of administrator and its reasons for making the choice.

(c)(i) The board shall be responsible for preparing a contract that shall be in accordance with all provisions of this section and all other provisions of law. The contract shall also include a requirement that the contractor shall consent to an evaluation of his performance. Such evaluation shall occur after the first six (6) months of the contract, and shall be reviewed at times the board determines to be necessary. The contract shall clearly describe the standards upon which the contractor shall be evaluated. Evaluations shall include, but not be limited to, efficiency in claims processing, including the processing pending claims.

(ii) The PEER Committee, at the request of the House or Senate Appropriations Committee or the House or Senate Insurance Committee and with funds specifically appropriated by the Legislature for such purpose, shall contract with an accounting firm or with other professionals to conduct a compliance audit of any administrator responsible for administering the insurance plan established by Section 25-15-3 et seq. Such audit shall review the administrator's compliance with the performance standards required for inclusion in the administrator's contract. Such audit shall be delivered to the Legislature no later than January 1.

(2) Contracts for the administration of the insurance plan established in Section 25-15-3 et seq. shall commence at the beginning of the calendar year and shall end on the last day of a calendar year. This shall not apply to contracts provided for in subsection (3) of this section.

(3) If the board determines that it is necessary to not renew the contract of an administrator, or finds it necessary to terminate a contract with or without cause as provided for in the contract of the administrator, the board is authorized to select an administrator without complying with the bid requirements in subsections (1) and (2) of this section. Such contracts shall be for the balance of the calendar year in which the nonrenewal or termination occurred, and may be for an additional calendar year if the board determines that the best interests of the plan members are served by such. Any contract negotiated on an interim basis shall include a detailed transition plan which shall ensure the orderly transfer of responsibilities between administrators and shall include, but not be limited to, provisions regarding the transfer of records, files and tapes.

(4) Except for contracts executed under the authority of subsection (3) of this section, the board shall select administrators at least six (6) months before the expiration of the current administrator's contract. The period between the selection of the new administrator and the effective date of the new contract shall be known as the transition period. Whenever the newly selected admin-

istrator is an entity different from the entity performing the administrator's function, it shall be the duty of the board to prepare a detailed transition plan which shall insure the orderly transfer of responsibilities between administrators. This plan shall be effective during the transition period, and shall include, but not be limited to, provisions regarding the transfer of records, files and tapes. Further, the plan shall detail the steps necessary to transfer records and responsibilities and set deadlines for when such steps should be completed. The board shall include in all requests for proposals, contracts with administrators, and all other contracts, provisions requiring the cooperation of administrators and contractors in any future transition of responsibilities, and their cooperation with the board and other contractors with respect to ongoing coordination and delivery of health plan services. The board shall furnish the Legislature, Governor and advisory council with copies of all transition plans and keep them informed of progress on such plans.

(5) No brokerage fees shall be paid for the securing or executing of any contracts pertaining to the insurance plan established by Section 25-15-3 et seq., whether fully insured or self-insured.

(6) Any corporation, association, company or individual that contracts with the board for the administration or service of the self-insured plan shall remit one hundred percent (100%) of all savings or discounts resulting from any contract to the board or participant, or both. Any corporation, association, company or individual that contracts with the board for the administration or service of the self-insured plan shall allow, upon notice by the board, the board or its designee to audit records of the corporation, association, company or individual relative to the corporation, association, company or individual's performance under any contract with the board. The information maintained by any corporation, association, company or individual, relating to such contracts, shall be available for inspection upon request by the board and such information shall be compiled in a manner that will provide a clear audit trail.

HISTORY:

Laws, 1995, ch. 554, § 1; Laws, 1999, ch. 511, § 12, eff from and after July 1, 1999.

Editor's Notes —

This section was formerly codified as a note to §§ 25-15-5 and 25-15-255 [Repealed] and was reclassified by the Revisor of Statutes.

Cross References —

Administration of state employee life and health insurance plan generally, see § 25-15-5.

§ 25-15-303. State and Public School Employees Health Insurance Management Board.

(1) There is created the State and School Employees Health Insurance Management Board, which shall administer the State and School Employees Life and Health Insurance Plan provided for under Section 25-15-3 et seq. The State and School Employees Health Insurance Management Board, hereafter referred to as the "board," shall also be responsible for administering all procedures for selecting third-party administrators provided for in Section 25-15-301.

(2) The board shall consist of the following:

(a) The Chairman of the Workers' Compensation Commission;

(b) The State Personnel Director;

(c) The Commissioner of Insurance, or his designee;

(d) The Commissioner of Higher Education;

(e) The State Superintendent of Public Education;

(f) The Executive Director of the Department of Finance and Administration;

(g) The Executive Director of the Mississippi Community College Board;

(h) The Executive Director of the Public Employees' Retirement System;

(i) Two (2) appointees of the Governor whose terms shall be concurrent with that of the Governor, one (1) of whom shall have experience in providing actuarial advice to companies that provide health insurance to large groups and one (1) of whom shall have experience in the day-to-day management and administration of a large self-funded health insurance group;

(j) The Chairman of the Senate Insurance Committee, or his designee;

(k) The Chairman of the House of Representatives Insurance Committee, or his designee;

(*l*) The Chairman of the Senate Appropriations Committee, or his designee; and

(m) The Chairman of the House of Representatives Appropriations Committee, or his designee.

The legislators, or their designees, shall serve as ex officio, nonvoting members of the board.

The Executive Director of the Department of Finance and Administration shall be the chairman of the board.

(3) The board shall meet at least monthly and maintain minutes of the meetings. A quorum shall consist of a majority of the authorized voting membership of the board. The board shall have the sole authority to promulgate rules and regulations governing the operations of the insurance plans and shall be vested with all legal authority necessary and proper to perform this function including, but not limited to:

(a) Defining the scope and coverages provided by the insurance plan;

(b) Seeking proposals for services or insurance through competitive processes where required by law and selecting service providers or insurers under procedures provided for by law; and

(c) Developing and adopting strategic plans and budgets for the insurance plan.

The department shall employ a State Insurance Administrator, who shall be responsible for the day-to-day management and administration of the insurance plan. The Department of Finance and Administration shall provide to the board on a full-time basis personnel and technical support necessary and sufficient to effectively and efficiently carry out the requirements of this section.

(4) Members of the board shall not receive any compensation or per diem, but may receive travel reimbursement provided for under Section 25-3-41

except that the legislators shall receive per diem and expenses, which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the board shall be paid while the Legislature is in session.

HISTORY:

Laws, 1997, ch. 606, § 10; Laws, 1999, ch. 511, § 13; Laws, 2005, ch. 408, § 1; Laws, 2007, ch. 435, § 1; Laws, 2012, ch. 347, § 1; Laws, 2012, ch. 349, § 1; Laws, 2014, ch. 397, § 5, eff from and after July 1, 2014.

Joint Legislative Committee Note —

Section 1 of ch. 347, Laws, 2012, effective July 1, 2012, amended this section. Section 1 of ch. 349, Laws, 2012, effective from and after July 1, 2012, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

CHAPTER 17.

CAFETERIA FRINGE BENEFIT PLANS

Sec.	
25-17-1.	Definitions.
25-17-3.	Authority of state agency or local government entity to adopt cafeteria fringe benefit plan.
25-17-5.	Payment of cafeteria plan costs; salary reduction agreements.
25-17-7.	Treatment of amounts by which employees' salaries are reduced for purposes of retirement benefit and income tax computations.
25-17-9.	Requirements with respect to providers of cafeteria plans.
25-17-11.	Requirements with respect to providers of qualification and discrimination testing services.

§ 25-17-1. Definitions.

For purposes of this chapter:

(a) "State agency" means every state institution, board, commission, council, department or unit thereof created by the Mississippi Constitution or statutes.

(b) "Local governmental entity" means any county, municipality, school district, public hospital or other political subdivision of the state.

(c) "Cafeteria plan" means a written plan providing benefits to eligible employees which meets the requirements of Section 125 et seq. of the Internal Revenue Code and regulations thereunder.

(d) "Salary reduction agreement" means a written agreement between an eligible employee and a state agency or local governmental entity whereby the employee agrees to reduce his or her salary by a stated amount or an amount equal to the cost of benefits selected under a cafeteria plan and the state agency or local governmental entity agrees to contribute such amount to cover the cost of the benefits selected by the eligible employee.

(e) "Eligible employee" means an officer or employee of a state agency or local governmental entity who elects to participate in a cafeteria plan described in paragraph (c) of this section. The term includes state agency officers and employees whether or not engaged in state service, as defined in Section 25-9-107, Mississippi Code of 1972. The term does not include individuals:

(i) Engaged as independent contractors; or

(ii) Whose periods of employment are on an intermittent or irregular basis, or who are employed on less than half-time basis unless the individual is employed in a position classified as a job-sharing position.

HISTORY:

Laws, 1986, ch. 513, § 1; reenacted, Laws, 1987, ch. 345, § 1; reenacted, Laws, 1989, ch. 529, § 1, eff from and after June 30, 1989.

Editor's Notes —

Laws of 1987, ch. 345, § 9, changed the repeal date of this section from July 1, 1987, to July 1, 1989. Subsequently, Laws of 1989, ch. 529, § 7, effective from and after June 30, 1989, amended Laws of 1987, ch. 345, § 9, so as to remove the provision for the repeal of this section.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (e) was corrected by substituting "...paragraph (c) of this section" for "...Section 25-17-1(c), Mississippi Code of 1972."

Federal Aspects—

Section 125 et seq. of the Internal Revenue Code, see 26 USCS § 125 et seq.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Master and Servant § 82.

CJS.

56 C.J.S., Master and Servant § 99.

§ 25-17-3. Authority of state agency or local government entity to adopt cafeteria fringe benefit plan.

Notwithstanding any other benefit plan offered to any eligible employee of a state agency or local governmental entity, all state agencies shall, and any local governmental entity may contract for and adopt a benefit plan that meets the requirements of a cafeteria plan as defined in Section 125 et seq. of the Internal Revenue Code of 1986, and regulations thereunder, for the benefit of eligible employees and their dependents. However, the maximum benefit available under a health flexible spending account shall be Ten Thousand Dollars ($10,000.00) per participating employee per plan year, unless federal Internal Revenue Service regulations allow that the available benefit at any point in time may be limited by the premium paid as of that point in time. Any state agency or local governmental entity may contract for insurance to cover its potential for loss under a health flexible spending account.

HISTORY:

Laws, 1986, ch. 513, § 2; reenacted, Laws, 1987, ch. 345, § 2; Laws, 1989, ch. 529, § 2; Laws, 1990, ch. 533, § 1; Laws, 1991, ch. 599, § 1; Laws, 2008, ch. 402, § 1, eff from and after July 1, 2008.

Editor's Notes —

Laws of 1987, ch. 345, § 9, changed the repeal date of this section from July 1, 1987, to July 1, 1989. Subsequently, Laws of 1989, ch. 529. § 7, effective from and after June 30, 1989, amended Laws of 1987, ch. 345, § 9, so as to remove the provision for the repeal of this section.

Cross References —

Contributions by eligible employees to cover costs of cafeteria plans authorized by this section, see § 25-17-5.

Requirements of cafeteria plans, see § 25-17-9.

Federal Aspects—

Sections 125 et seq. of the Internal Revenue Code of 1986, see 26 USCS §§ 125 et seq.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Master and Servant § 82.

CJS.

56 C.J.S., Master and Servant § 99.

§ 25-17-5. Payment of cafeteria plan costs; salary reduction agreements.

(1) Contributions to cover the cost of benefits provided under a cafeteria plan authorized by Section 25-17-3, Mississippi Code of 1972, shall be paid by the eligible employee pursuant to a salary reduction agreement. The state

agency or local governmental entity shall be authorized to pay part or all of the administrative expenses therefor.

(2) The state agency or local governmental entity may agree with an eligible employee that the employee's salary shall be reduced monthly by an amount equal to the cost of benefits selected and to be paid for by the eligible employee. Such reduction shall be made pursuant to salary reduction agreements entered into between eligible employees and the state agency or local governmental entity.

(3) The state agency or local governmental entity is authorized, upon request of an eligible employee, to reduce each month the salary of the eligible employee by an amount of money, or the cost of selected benefits, designated by that employee in the salary reduction agreement entered into between the employee and the state agency or local governmental entity.

HISTORY:

Laws, 1986, ch. 513, § 3; reenacted, Laws, 1987, ch. 345, § 3; reenacted, Laws, 1989, ch. 529, § 3, eff from and after June 30, 1989.

Editor's Notes —

Laws of 1987, ch. 345, § 9, changed the repeal date of this section from July 1, 1987, to July 1, 1989. Subsequently, Laws of 1989, ch. 529, § 7, effective from and after June 30, 1989, amended Laws of 1987, ch. 345, § 9, so as to remove the provision for the repeal of this section.

Cross References —

Exclusion of salary reductions under this section from the definition of "wages" for purposes of Article 1 of Chapter 11 of this title, see § 25-11-5.

Provision that salary reductions under this section are to be included as earned compensation for purposes of Articles 1 and 3 of chapter 11 of this title, see § 25-11-103.

Treatment of amounts by which employees' salaries are reduced for purposes of retirement benefit and income tax computations, see § 25-17-7.

Exclusion of salary reductions under this section from the term "gross income" for purposes of Article 1 of Chapter 7 of this title, see § 27-7-15.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Master and Servant § 82.

CJS.

56 C.J.S., Master and Servant § 99.

§ 25-17-7. Treatment of amounts by which employees' salaries are reduced for purposes of retirement benefit and income tax computations.

(1) The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5, Mississippi Code of 1972, shall continue to be included as compensation for the purpose of computing state retirement benefits, provided this inclusion does not conflict with federal law, including federal regulations and federal administrative interpretations thereunder, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans.

(2) The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5, Mississippi Code of 1972, shall not be considered as current taxable income for purposes of computing Mississippi income taxes to be withheld and paid on behalf of the employee.

HISTORY:

Laws, 1986, ch. 513, § 4; reenacted, Laws, 1987, ch. 345, § 4; reenacted, Laws, 1989, ch. 529, § 4, eff from and after June 30, 1989.

Editor's Notes —

Laws of 1987, ch. 345, § 9, changed the repeal date of this section from July 1, 1987, to July 1, 1989. Subsequently, Laws of 1989, ch. 529, § 7, effective from and after June 30, 1989, amended Laws of 1987, ch. 345, § 9, so as to remove the provision for the repeal of this section.

Federal Aspects—

Section 125 of the Internal Revenue Code of 1954, see 26 USCS § 125.

Provisions of the Federal Insurance Contributions Act, see 26 USCS §§ 3101 et seq.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Master and Servant § 82.

CJS.

56 C.J.S., Master and Servant § 99.

§ 25-17-9. Requirements with respect to providers of cafeteria plans.

(1) For the purpose of this section, "provider" means any insurance company, corporation, person or other entity which provides benefits included in, or administrative services related to, cafeteria plans.

(2) The State Auditor shall compile a list of providers of cafeteria plans which shall contain those providers he deems acceptable to provide benefits or services related to a cafeteria plan of a state agency or local governmental entity. To be deemed acceptable, a provider shall:

(a) Be authorized to do business in this state or be a corporation organized or existing under the laws of this state;

(b) Maintain an office in this state with sufficient staff and equipment to render the contracted services for plans which are subject to this chapter as required by the State Auditor;

(c) Obtain and maintain a comprehensive dishonesty, destruction and disappearance bond in the amount designated by the State Auditor (a copy of which shall be maintained on file at all times in the office of the State Auditor, who shall be promptly notified by the surety on such bond of any change in or cancellation of such bond) unless the provider uses the type of administration which does not require the accumulation or escrow of employees' or employers' monies for reimbursement purposes; and

(d) Comply with the guidelines established by the State Auditor pertaining to state agencies' or local governmental entities' cafeteria plans.

The State Auditor shall revise the list annually unless an earlier revision is necessary to remove a provider who does not satisfy the requirements set forth in paragraphs (a) through (d) of this subsection.

(3) Only providers who appear on the most recent list compiled by the State Auditor shall, directly or indirectly, provide benefits included in or administrative services related to cafeteria plans of a state agency or local governmental entity; provided, however, that the State Tax Commission may, and is hereby authorized to, administer all or any part of the cafeteria plan which it has adopted, including providing benefits and performing administrative services relating thereto, without the use of a provider, and the State Tax Commission shall be exempt from paragraphs (a), (b) and (c) of subsection

(2) of this section in administering the cafeteria plan. If the State Tax Commission administers only part of the cafeteria plan internally, that part of the plan administered outside of the State Tax Commission shall be administered by a provider who appears on the most recent list of providers compiled by the State Auditor, and such provider shall meet all of the requirements of subsection (2) of this section.

(4) A state agency or local governmental entity shall promptly notify the State Auditor of any complaint against a provider.

(5) All cafeteria plans authorized in Section 25-17-3, Mississippi Code of 1972, shall be in compliance with current Internal Revenue Service requirements promulgated in Sections 89 and 125 of the Internal Revenue Code. Documentation of such compliance shall be on file in the office of the State Auditor.

(6) The State Auditor may promulgate rules and regulations necessary to implement this section.

HISTORY:

Laws, 1986, ch. 513, § 5; reenacted, Laws, 1987, ch. 345, § 5; Laws, 1988, ch. 540; Laws, 1989, ch. 529, § 5, eff from and after June 30, 1989.

Editor's Notes —

Laws of 1987, ch. 345, § 9, changed the repeal date of this section from July 1, 1987 to July 1, 1989. Subsequently, Laws of 1989, ch. 529, § 7, effective from and after June 30, 1989, amended Laws of 1987, ch. 345, § 9, so as to remove the provision for the repeal of this section.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Commissioner of Insurance, see § 83-1-3.

Federal Aspects—

Sections 89 and 125 of the Internal Revenue Code, see 26 USCS §§ 49 and 125.

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Master and Servant § 82.

CJS.

56 C.J.S., Master and Servant § 99.

§ 25-17-11. Requirements with respect to providers of qualification and discrimination testing services.

(1) For the purpose of this section as it pertains to Section 89 of the Internal Revenue Code, "administrator" means any corporation, person or other entity which provides qualification and discrimination testing services in compliance with Section 89 of the Internal Revenue Code.

(2) The State Auditor shall compile a list of administrators he deems acceptable to provide to state agencies and local governmental entities the services described in subsection (1) of this section. To be deemed acceptable, an administrator shall:

(a) Be authorized to do business in this state or be a corporation organized or existing under the laws of this state;

(b) Maintain an office in this state with sufficient staff and equipment to render the services which are subject to this chapter as required by the State Auditor; and

(c) Comply with the guidelines established by the State Auditor pertaining to state agencies' or local governmental entities' compliance with Section 89 of the Internal Revenue Code.

The State Auditor shall revise the list annually unless an earlier revision is necessary to remove an administrator who does not satisfy the requirements set forth in paragraphs (a) through (c) of this subsection.

(3) Only administrators who appear on the most recent list compiled by the State Auditor shall, directly or indirectly, provide qualification and discrimination testing services to a state agency or local governmental entity.

(4) A state agency or local governmental entity shall promptly notify the State Auditor of any complaint against an administrator.

(5) The State Auditor may promulgate rules and regulations necessary to implement this section.

HISTORY:

Laws, 1989, ch. 529, § 6, eff from and after June 30, 1989.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Federal Aspects—

Section 89 of the Internal Revenue Code, see 26 USCS § 89.

CHAPTER 19.

PUBLIC EMPLOYER-ASSISTED HOUSING PROGRAM

Sec.
25-19-1. Definitions; authorization to create employer-assisted housing program; forms of assistance.

§ 25-19-1. Definitions; authorization to create employer-assisted housing program; forms of assistance.

(1) As used in this section:

(a) "Eligible employee" means an employee of a public employer that is not subject to the provisions of Section 25-3-37 and meets the eligibility criteria set forth in the rules and regulations of the public employer.

(b) "Public employer" means any agency, board, commission, municipality, governing authority or other instrumentality of state or local government including, but not limited to, an institution of higher learning or a community or junior college.

(2) Any public employer may establish an employer-assisted housing program to provide funds to eligible employees of the public employer to be used for the housing assistance. Funds under this program may be utilized by an eligible employee for rental security deposits, rental subsidies, down payments, closing costs or any other fees or costs associated with the rental or purchase of a home. The housing assistance may be in the form of a grant, forgivable loan or repayable loan. The public employer may contract with one or more public or private entities to provide assistance in implementing and administering the program and shall adopt rules and regulations for the administration of the program.

(3) If the assistance is structured as a forgivable loan, the participating employee must remain as an employee of the public employer for an agreed upon period of time, as determined by the rules and regulations adopted by the public employer in order to have the loan forgiven. The forgiveness structure, amount of assistance and repayment terms shall be determined by the public employer.

HISTORY:

Laws, 2008, ch. 489, § 2, eff from and after passage (approved Apr. 14, 2008).

Editor's Notes —

Laws of 2008, ch. 489, § 3, provides:

"SECTION 3. Section 1 of this act shall take effect and be in force from and after January 1, 2008, and Section 2 of this act shall take effect and be in force from and after its passage [approved April 14, 2008]."

CHAPTER 31.

DISTRICT ATTORNEYS

Sec.

25-31-1. Qualifications for office.
25-31-3. Repealed.
25-31-5. Legal assistants to district attorney; expenditure of certain federal funds for additional legal assistants and criminal investigators authorized.
25-31-6. Legal assistants to district attorney; qualifications; powers and duties; removal.
25-31-7. Repealed by implication [see now § 25-31-8].
25-31-8. Office operating allowance.
25-31-9. Repealed by implication.
25-31-10. Criminal investigators.
25-31-10.1. Supplemental salary, expenses and fringe benefits for district attorneys, legal assistants and criminal investigators.
25-31-11. Powers and duties.
25-31-13. District attorney to attend deliberations of grand jury.
25-31-15. District attorney to pass on public accounts.
25-31-17. District attorney to give opinions and prosecute public debtors.
25-31-19. To represent state tax and public service commissions.
25-31-21. Pro tempore appointment and compensation of appointees.
25-31-23. Duty as to fines.
25-31-25. District attorney to institute and prosecute suits to vacate fraudulent conveyances.
25-31-27. Antitrust suits to require consent of Attorney General.
25-31-29. Reports on persons sentenced to state penitentiary.
25-31-31. Office of criminal records.
25-31-33. Certain counties to contribute toward salaries of district attorneys and legal assistants.
25-31-35. District attorneys shall not engage in private practice; exception.
25-31-36. Right of district attorney to conclude civil cases pending at time of taking office; practice by appointees pending filling of vacancy by election.
25-31-37. Repealed.
25-31-39. Abolition of part-time district attorneys and part-time legal assistants; exception.
25-31-41. District Attorneys Operation Fund created; source of money; use of funds; funding of district attorneys' expenses; deposit of user charges and fees authorized by Section 99-19-72(1)(a) and (b) into State General Fund.
25-31-43. Retention of one service-issued sidearm by district attorney, legal assistant to district attorney or criminal investigator employed by district attorney upon retirement.

§ 25-31-1. Qualifications for office.

The district attorney shall possess all the qualifications of county officers and, in addition thereto, shall be a regular licensed and practicing attorney and shall have been duly admitted to practice before the Supreme Court of the State of Mississippi for a period of two (2) years.

HISTORY:

Codes, 1942, § 3920.3; Laws, 1966, ch. 389, § 1, eff from and after passage (approved May 17, 1966).

Cross References —

Filling vacancies in the office of district attorney, see § 23-15-843.

JUDICIAL DECISIONS

1. In general.

Where a former chancellor had been subject to discipline in the last year of his term, and five years later ran as a candidate for district attorney, the procedure for determining electoral candidates' qualifications under Miss. Code Ann. § 23-15-299(7) was controlling, and the former chancellor was disqualified as a candidate, because the evidence showed the chancellor was not a "practicing attorney," on or before the date of the general election as required by Miss. Code Ann. § 25-31-1. Grist v. Farese, 860 So. 2d 1182, 2003 Miss. LEXIS 452 (Miss. 2003).

This section does not violate the Voting Rights Act of 1965, does not deny the plaintiff equal protection of the law, and does not infringe upon his first amendment rights. Waide v. Waller, 402 F. Supp. 922, 1975 U.S. Dist. LEXIS 15781 (N.D. Miss. 1975).

RESEARCH REFERENCES

Am. Jur.
63 Am. Jur. 2d, Prosecuting Attorneys § 5.

§ 25-31-3. Repealed.

Repealed by Laws, 1972, ch. 497, § 5, eff from and after July 1, 1972. [Codes, 1942, § 3920.7; Laws, 1970, ch. 349, § 1]

Editor's Notes —
Former § 25-31-3 created the office of assistant district attorney.

§ 25-31-5. Legal assistants to district attorney; expenditure of certain federal funds for additional legal assistants and criminal investigators authorized.

(1) The following number of full-time legal assistants are authorized in the following circuit court districts:

(a) First Circuit Court District .... nine (9) legal assistants.

(b) Second Circuit Court District .... ten (10) legal assistants.

(c) Third Circuit Court District .... five (5) legal assistants.

(d) Fourth Circuit Court District .... six (6) legal assistants.

(e) Fifth Circuit Court District .... five (5) legal assistants.

(f) Sixth Circuit Court District .... two (2) legal assistants.

(g) Seventh Circuit Court District .... eleven (11) legal assistants.

(h) Eighth Circuit Court District .... three (3) legal assistants.

(i) Ninth Circuit Court District .... three (3) legal assistants.

(j) Tenth Circuit Court District .... four (4) legal assistants.

(k) Eleventh Circuit Court District .... five (5) legal assistants.

(*l*) Twelfth Circuit Court District .... five (5) legal assistants.

(m) Thirteenth Circuit Court District .... four (4) legal assistants.

(n) Fourteenth Circuit Court District .... five (5) legal assistants.

(o) Fifteenth Circuit Court District .... six (6) legal assistants.

(p) Sixteenth Circuit Court District........ five (5) legal assistants.

(q) Seventeenth Circuit Court District .... seven (7) legal assistants.

(r) Eighteenth Circuit Court District .... two (2) legal assistants.

(s) Nineteenth Circuit Court District .... six (6) legal assistants.

(t) Twentieth Circuit Court District .... six (6) legal assistants.

(u) Twenty-first Circuit Court District .... three (3) legal assistants.

(v) Twenty-second Circuit Court District .... three (3) legal assistants.

(2) In addition to any legal assistants authorized pursuant to subsection (1) of this section, the following number of full-time legal assistants are authorized (i) in the following circuit court districts if funds are appropriated by the Legislature to adequately fund the salaries, expenses and fringe benefits of such legal assistants, or (ii) in any of the following circuit court districts in which the board of supervisors of one or more of the counties in a circuit court district adopts a resolution to pay all of the salaries, supplemental pay, expenses and fringe benefits of legal assistants authorized in such district pursuant to this subsection:

(a) First Circuit Court District .... two (2) legal assistants.

(b) Second Circuit Court District .... two (2) legal assistants.

(c) Third Circuit Court District .... two (2) legal assistants.

(d) Fourth Circuit Court District .... two (2) legal assistants.

(e) Fifth Circuit Court District .... two (2) legal assistants.

(f) Sixth Circuit Court District .... two (2) legal assistants.

(g) Seventh Circuit Court District .... two (2) legal assistants.

(h) Eighth Circuit Court District .... two (2) legal assistants.

(i) Ninth Circuit Court District .... two (2) legal assistants.

(j) Tenth Circuit Court District .... two (2) legal assistants.

(k) Eleventh Circuit Court District .... two (2) legal assistants.

(*l*) Twelfth Circuit Court District .... two (2) legal assistants.

(m) Thirteenth Circuit Court District .... two (2) legal assistants.

(n) Fourteenth Circuit Court District .... two (2) legal assistants.

(o) Fifteenth Circuit Court District .... two (2) legal assistants.

(p) Sixteenth Circuit Court District .... two (2) legal assistants.

(q) Seventeenth Circuit Court District .... two (2) legal assistants.

(r) Eighteenth Circuit Court District .... two (2) legal assistants.

(s) Nineteenth Circuit Court District .... two (2) legal assistants.

(t) Twentieth Circuit Court District .... two (2) legal assistants.

(u) Twenty-first Circuit Court District .... two (2) legal assistants.

(v) Twenty-second Circuit Court District .... two (2) legal assistants.

(3) The board of supervisors of any county may pay all or a part of the salary, supplemental pay, expenses and fringe benefits of any district attorney or legal assistant authorized in the circuit court district to which such county belongs pursuant to this section.

(4) The district attorney of any circuit court district may employ additional legal assistants or criminal investigators, or both, without regard to any limitation on the number of legal assistants authorized in this section or criminal investigators authorized by other provisions of law to the extent that the district attorney's office receives funds from any source. Any source shall include, but is not limited to, office generated funds, funds from a county, a combination of counties, a municipality, a combination of municipalities, federal funds, private grants or foundations, or by means of an Interlocal Cooperative Agreement authorized by Section 17-13-1 which may be expended for those positions in an amount sufficient to pay all of the salary, supplemental pay, expenses and fringe benefits of the positions. Such funds may either be paid out of district attorney accounts, transferred by the district attorney to the Department of Finance and Administration or to one or more of the

separate counties comprising the circuit court district, and said funds shall be disbursed to such employees in the same manner as state-funded criminal investigators and full-time legal assistants. The district attorney shall report to the board of supervisors of each county comprising the circuit court district the amount and source of the supplemental salary, expenses and fringe benefits, and the board in each county shall spread the same on its minutes. The district attorney shall also report such information to the Department of Finance and Administration which shall make such information available to the Legislative Budget Office.

(5) The district attorney shall be authorized to assign the duties of a legal assistant regardless of the source of funding for such legal assistants.

HISTORY:

Codes, 1942, § 3920.5; Laws, 1955, Ex. ch. 38, §§ 1-4; Laws, 1960, ch. 271, §§ 1-5; Laws, 1962, 2d Ex. Sess. ch. 18; Laws, 1966, ch. 368, § 1; Laws, 1972, ch. 497, § 1; Laws, 1973, ch. 494, § 1; Laws, 1974, ch. 544, § 1; Laws, 1975, ch. 506; Laws, 1976, ch. 468; Laws, 1977, ch. 453, §§ 2, 5; Laws, 1978, ch. 509, § 5; Laws, 1982, ch. 492; Laws, 1984, 1st Ex Sess, ch. 7; Laws, 1985, ch. 502, § 58; Laws, 1987, ch. 458; Laws, 1988, ch. 552; Laws, 1993, ch. 597, § 1; Laws, 1994, ch 564, § 100; Laws, 1996, ch. 512, § 1; Laws, 1997, ch. 577, § 5; Laws, 1999, ch. 501, § 1; Laws, 2005, ch. 506, § 3; Laws, 2006, ch. 561, § 1; Laws, 2007, ch. 558, § 1; Laws, 2009, ch. 455, § 1; Laws, 2010, ch. 529, § 1; Laws, 2014, 1st Ex Sess, ch. 2, § 1, eff from and after November 1, 2014.

Editor's Notes —

Laws of 1985, ch. 502, § 59, eff from and after July 1, 1985, amended section 2 of Chapter 7, Laws of the First Extraordinary Session of 1984, thereby deleting the provision that the 1984 act would stand repealed from and after December 31, 1985.

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2005, ch. 506, § 3.

Cross References —

Annual salaries of full-time district attorneys and full-time legal assistants, see § 25-3-35.

Office operating allowance for assistants authorized by this section, see § 25-31-8.

Authorization for district attorney to hire a victim assistance coordinator, see § 99-36-7.

OPINIONS OF THE ATTORNEY GENERAL

Drug forfeiture funds that were properly forfeited pursuant to court order can be used for any law enforcement purpose, including payment of salaries of assistant to district attorney, subject to statutory maximum, either directly or through reimbursing county for assistant's salary. 1993 Miss. Op. Att'y Gen. 416.

When an assistant district attorney transfers from a state-funded position to a non-state funded position as authorized in Section 25-31-5(2), the employee should not be treated as terminating state employment and should be paid for 30 days of personal leave with any excess balance transferred to PERS. 1996 Miss. Op. Att'y Gen. 856.

An assistant district attorney whose salary is funded by one county under Section 25-31-5 may also work and prosecute cases in another county within the circuit court district. The board of supervisors of a funding county may not restrict the authority of that assistant district attorney to prosecute cases in another county within the circuit court district. However, the board of supervisors is not obligated to fund such a position. 1996 Miss. Op. Att'y Gen. 526.

RESEARCH REFERENCES

ALR.

Power of assistant or deputy prosecuting attorney to file information, or to sign or prosecute it in his own name. 80 A.L.R.2d 1067.

§ 25-31-6. Legal assistants to district attorney; qualifications; powers and duties; removal.

Legal assistants to district attorneys shall be regularly licensed and practicing attorneys having been duly admitted to practice before the Supreme Court of the State of Mississippi, and shall have the power and authority, under the direction and supervision of the district attorney, to perform all of the duties required of that office. Said legal assistants may be removed at the discretion of the duly elected and acting district attorney, or for cause by the senior circuit judge of the district.

HISTORY:

Codes, 1942, §§ 3920.8, 3920.9; Laws, 1972, ch. 497, §§ 2, 3; Laws, 1978, ch. 509, § 6, eff from and after January 1, 1980.

JUDICIAL DECISIONS

1. In general.

Summary judgment was properly granted to a district attorney in an action arising from the apprehension of the wrong person for the crime of false pretenses because an assistant district attorney did not exceed the scope of her powers under Miss. Code Ann. § 25-31-6 in providing incorrect identifying information to police; the assistant district attorney was not acting as a sheriff at the time. Stewart v. DA, 923 So. 2d 1017, 2005 Miss. App. LEXIS 589 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 161 (Miss. 2006).

An appointed district attorney has the same power and authority as an elected district attorney, including the authority to remove an assistant district attorney and appoint one of his or her own choosing. Allred v. Webb, 641 So. 2d 1218, 1994 Miss. LEXIS 386 (Miss. 1994).

RESEARCH REFERENCES

ALR.

Power of assistant or deputy prosecuting or district attorney to file information, or to sign or prosecute it in his own name. 80 A.L.R.2d 1067.

§ 25-31-7. Repealed by implication [see now § 25-31-8].

Editor's Notes —

Code 1942, § 3920.5, from which Code 1972, § 25-31-7, was derived, was substantially amended by Laws of 1972, ch. 497, § 1, so as to eliminate the language referring to an office operating allowance. The substance of former § 25-31-7 is now found in § 25-31-8.

§ 25-31-8. Office operating allowance.

From and after July 1, 2006, in all circuit court districts in this state existing now or hereafter created, the district attorney shall receive from sums appropriated for such purpose from the General Fund or any special fund of the State of Mississippi, an office operating allowance for the necessary expenses of operating the office of the district attorney, including stenographic help, and other items and expenditures necessary and incident to the investigation of criminal cases, the general expenses of the office of the investigation of criminal cases, the general expenses of the office of the district attorney for preparing and/or trying felony cases and all other cases requiring the services of the district attorney, the sum of Thirty-five Thousand Dollars ($35,000.00) for each district, and an additional Four Thousand Dollars ($4,000.00) for each assistant authorized by Section 25-31-5(1). All expenditures made from such office operating allowances shall be upon written requisition of the duly elected district attorney to the State Auditor, as otherwise provided by law. The district attorney may delegate to the board of supervisors of any county in his district the responsibility and authority to employ and set the salary of not more than one (1) employee for the office of such district attorney, such salary to be paid as other expenditures are paid from the funds provided by this section. Such employee shall be deemed to be appointed and employed by the board of supervisors and the salary shall not be deemed to be a pecuniary benefit provided by the district attorney's office. The district attorney shall be authorized to assign the duties of any employees regardless of the source of funding for such employees.

HISTORY:

Codes, 1942, § 3920.10; Laws, 1972, ch. 497, § 4; Laws, 1976, ch. 392; Laws, 1977, ch. 453, § 3; Laws, 1978, ch. 509, § 7, 1979, ch. 490, § 1; Laws, 1981, ch. 522, § 1; Laws, 1993, ch. 391, § 1; Laws, 1994, ch. 586, § 2; Laws, 1996, ch. 493, § 1; Laws, 2006, ch. 443, § 1; Laws, 2007, ch. 413, § 1; Laws, 2009, ch. 455, § 2; brought forward without change, Laws, 2010, ch. 561, § 5, eff from and after July 1, 2010.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2006, ch. 443, § 3 provides:

"SECTION 3. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2006, whichever occurs later."

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2006 ch. 443, § 1.

Cross References —

Travel and other expenses of criminal investigators, see § 25-31-10.

OPINIONS OF THE ATTORNEY GENERAL

Expense of special prosecutor in so-called "Teenage sex cases" may be paid from funds generated by Worthless Check Unit at discretion of district attorney. 1990 Miss. Op. Att'y Gen. 40.

County may contribute funds to District Attorney's office but may not arbitrarily set amount of such funds at given percentage of incoming fine moneys. 1992 Miss. Op. Att'y Gen. 774.

There is nothing which prohibits district attorney from making additional payment to criminal records custodian from bad check unit funds for services which meet broadly drawn criteria of statute but such funds may not be used to exceed $15,000 salary cap contained in local and private legislation authorizing position. 1993 Miss. Op. Att'y Gen. 452.

The Bad Check Unit may be expended on any legitimate expense of the district attorney in the prosecution of the cases. This would include necessary insurance as approved by the State Auditor. See Section 25-31-8. 1995 Miss. Op. Att'y Gen. 130.

Section 25-31-8 authorizes the board of supervisors of any county within the district to assist the district attorney's office by employing and paying the salary of not more than one employee of the district attorney's office. Such employee shall be deemed appointed and employed by the board of supervisors with approval of the district attorney. 1996 Miss. Op. Att'y Gen. 388.

A district attorney may expend bad check funds to supplement the salary of a secretary, subject to any statutory maximum. 2004 Miss. Op. Att'y Gen. 420.

Section 25-31-8 authorizes the county board of supervisors to assist in the funding of the district attorney's office, which would include the District Attorney's worthless check unit. Wayne County Board of 2006 Miss. Op. Att'y Gen. 468.

§ 25-31-9. Repealed by implication.

Editor's Notes —

Code 1942, § 3920.5, from which Code 1972, § 25-31-9, was derived was substantially amended by Laws of 1972, ch. 497, § 1, so as to eliminate the language appearing in § 25-31-9. Former § 25-31-9 provided that §§ 25-31-5 and 25-31-7 did not supersede or repeal existing law.

§ 25-31-10. Criminal investigators.

(1) Any district attorney may appoint a full-time criminal investigator.

(2) The district attorneys of the Third, Fifth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth and Twentieth Circuit Court Districts may appoint one (1) additional full-time criminal investigator for a total of two (2) full-time criminal investigators.

(3) The district attorneys of the First, Second, Fourth, Seventh and Nineteenth Circuit Court Districts may appoint two (2) additional full-time criminal investigators for a total of three (3) full-time criminal investigators.

(4) No district attorney or assistant district attorney shall accept any private employment, civil or criminal, in any matter investigated by such criminal investigators.

(5) The full and complete compensation for all public duties rendered by said criminal investigators shall be not more than Fifty-nine Thousand Five Hundred Dollars ($59,500.00) per annum, to be determined at the discretion of the district attorney based upon the qualifications, education and experience of the criminal investigator, plus necessary travel and other expenses, to be paid in accordance with Section 25-31-8. However, the maximum salary under this subsection for a criminal investigator who has a law degree may be supplemented by the district attorney from other available funds, but not to exceed the maximum salary for a legal assistant to a district attorney.

(6) Any criminal investigator may be designated by the district attorney to attend the Law Enforcement Officers Training Program set forth in Section 45-6-1 et seq., Mississippi Code of 1972. The total expenses associated with attendance by criminal investigators at the Law Enforcement Officers Training Program shall be paid out of the funds of the appropriate district attorney.

(7) The district attorney shall be authorized to assign the duties of criminal investigators regardless of the source of funding for such criminal investigators.

HISTORY:

Laws, 1974, ch. 536, § 1; Laws, 1977, ch. 453, § 4; Laws, 1978, ch. 509, § 8; Laws, 1981, ch. 522, § 2; Laws, 1988, ch. 522; Laws, 1993, ch. 550, § 8; Laws, 1993, ch. 590, § 1; Laws, 1994, ch. 616, § 1; Laws, 1996, ch. 494, § 1; Laws, 1997, ch. 303, § 1; Laws, 1999, ch. 581, § 4; Laws, 2003, ch. 563, § 4; Laws, 2006, ch. 548, § 3; Laws, 2007, ch. 558, § 2; Laws, 2009, ch. 455, § 3, eff from and after July 1, 2009.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

Authority of criminal investigators employed by district attorneys to carry firearms, see § 97-37-7.

Salary of a victim assistance coordinator, see § 99-36-7.

OPINIONS OF THE ATTORNEY GENERAL

Bad check funds may be used to supplement salary of victim assistance coordinator and criminal investigators subject to statutory maximum. 1993 Miss. Op. Att'y Gen. 445.

A criminal investigator with a law degree and license may not appear in court as an attorney on behalf of the state. 2004 Miss. Op. Att'y Gen. 616.

§ 25-31-10.1. Supplemental salary, expenses and fringe benefits for district attorneys, legal assistants and criminal investigators.

In addition to the salaries, expenses and fringe benefits of district attorneys and legal assistants authorized by Section 25-3-35(5) and (6) and criminal investigators authorized by Section 25-31-10(5), the salary of a district attorney may be supplemented in an amount not to exceed Eight Thousand Three Hundred Dollars ($8,300.00) per year; the salary of a legal assistant may be supplemented in an amount not to exceed Six Thousand Dollars ($6,000.00) per year; and the salary of a criminal investigator may be supplemented in an amount not to exceed Five Thousand Dollars ($5,000.00) per year, payable monthly. The supplemental salary, expenses and fringe benefits authorized herein may be paid from office-generated funds, funds from a county, a combination of counties, a municipality, a combination of municipalities, a county and a municipality, a combination of counties and municipalities, federal funds, grants from private foundations, or by means of an Interlocal Cooperative Agreement authorized by Section 17-13-1. The district attorney shall report to the board of supervisors of each county comprising the circuit court district the amount and source of the supplemental salary, expenses and fringe benefits, and the board in each county shall spread the same on its minutes. The district attorney shall also report such information to the Department of Finance and Administration who shall make such information available to the Legislative Budget Office. The supplemental salary, expenses and fringe benefits may either be paid from district attorney accounts, transferred by the district attorney to the Department of Finance and Administration or to one or more of the separate counties comprising the circuit court district, and such funds shall be disbursed to the employees in the same manner as state-funded criminal investigators and full-time legal assistants.

HISTORY:

Laws, 2010, ch. 530, § 1, eff June 10, 2010, (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by deleting the subsection (1) designation preceding "In addition to the salaries . . ." at the beginning of the section. The Joint Committee ratified the correction at its July 13, 2011, meeting.

Editor's Notes —

By letter dated June 10, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of

1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 530, § 1.

§ 25-31-11. Powers and duties.

(1) It shall be the duty of the district attorney to represent the state in all matters coming before the grand juries of the counties within his district and to appear in the circuit courts and prosecute for the state in his district all criminal prosecutions and all civil cases in which the state or any county within his district may be interested; but if two (2) or more counties are adversely interested, the district attorney shall not represent either. Any district attorney may also institute and prosecute to final judgment or decree any case in the name of the state against any person or corporation for any violation of the Constitution or the laws of this state, in order to enforce any penalties, fines or forfeitures imposed by law in any court of his district having jurisdiction, with like effect as if the suit was instituted by the Attorney General.

(2) The district attorney may transfer any case handled by him to a county prosecuting attorney when charges in such case no longer constitute a felony.

(3) The validity of any judgment or sentence shall not be affected by the division of jurisdiction under this section, and no judgment or sentence may be reversed or modified upon the basis that the case was not processed according to this section.

(4) A county prosecuting attorney or municipal prosecuting attorney may be designated by the district attorney to appear on behalf of the district attorney pursuant to an agreement relating to appearances in certain courts or proceedings in the county of the county prosecuting attorney or in the municipality of the municipal prosecuting attorney. Such agreement shall be filed with the circuit court clerk of any county where such agreement shall be operative. Such agreement shall be binding upon the district attorney and county prosecuting attorney or municipal prosecuting attorney until dissolved by either of them in writing upon five (5) days' notice.

(5) Where any statute of this state confers a jurisdiction, responsibility, duty, privilege or power upon a county attorney or county prosecuting attorney, either solely, jointly or alternatively with a district attorney, such county prosecuting attorney shall be responsible for the prosecution, handling, appearance, disposition or other duty conferred by such statute. Any such provision shall not be construed to bestow such responsibility, jurisdiction or power upon the district attorney where there is no elected county prosecuting attorney, and any such matter shall be handled pursuant to Section 19-3-49, Mississippi Code of 1972.

(6) The district attorney or his designated assistant, or the county prosecuting attorney or his designated assistant, shall assist the Attorney General in appeals from his district to the Mississippi Supreme Court and in other post judgment proceedings, and shall appear for oral argument before the Supreme Court when directed by the Supreme Court.

(7) The several district attorneys shall submit reports of revenues and expenditures and shall submit budget requests as required for State General Fund agencies. For purposes of budget control, the several offices of district attorney shall be considered General Fund agencies and the budget and accounts of the several offices, including salaries, travel expenses, office expenses and any other expenditures or revenues, shall be consolidated for all districts as far as such consolidation is practical.

All revenue or funds allocated or expended by a district attorney, whether such funds are appropriated from state funds, or whether such funds are received from county funds, grants or otherwise, shall be reported to the Legislative Budget Office.

(8) A district attorney shall be authorized to assign the duties of employees regardless of the source of funding for such employees.

HISTORY:

Codes, Hutchinson's 1848, ch. 22, art 3 (4); 1857, ch. 6, art 70; 1871, § 214; 1880, § 256; 1892, § 1555; 1906, § 1661; Hemingway's 1917, § 1398; 1930, § 4363; 1942, § 3920; Laws, 1978, ch. 509, § 9; Laws, 1979, ch. 490, § 2; Laws, 1984, ch. 488, § 175; Laws, 2009, ch. 455, § 4, eff from and after July 1, 2009.

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References —

Duty of Attorney General to assist district attorney, see § 7-5-53.

Quo warranto proceedings, generally, see §§ 11-39-1 et seq.

Petition for mandamus by district attorney, see § 11-41-1.

Modification of charges resulting in transfer of responsibility for prosecution from county prosecuting attorney to district attorney, see § 19-23-11.

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

Duty of district prosecuting attorney to advise inquiring electors concerning provisions of law for removal of public officials from office, see § 25-5-7.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Rule that partner of county attorney is not to defend certain criminal cases, see § 73-3-49.

Rule that district attorneys are not to advise or defend criminals, see § 97-11-3.

Penalties for violation of gambling laws by public officers, see § 97-33-3.

JUDICIAL DECISIONS

ANALYSIS

1. Powers and duties generally.
2. Incidental or implied powers.
3. Relation to Attorney General.
4. Matters outside district or of statewide concern.
5. District Attorney as peace officer.
6. Trial in general.
7. —Calling witnesses.
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1. Powers and duties generally.

District attorney is not prohibited from bringing civil tax matters before a grand jury, and arguably has a duty to do so, particularly in light of the fact that the legislature has vested district attorneys and grand juries with authority to investigate a variety of civil matters. Entergy Miss., Inc. v. State, 132 So. 3d 568, 2014 Miss. LEXIS 120 (Miss. 2014).

The prosecuting attorney, as a representative of the state, has an obligation to be fair in his prosecution of a case. This is an obligation that can be fulfilled without relaxing the solemn duty to vigorously prosecute. Hosford v. State, 525 So. 2d 789, 1988 Miss. LEXIS 217 (Miss. 1988).

Mere change of venue does not terminate the duty of a prosecutor; thus in a prosecution for murder, the trial court properly overruled defendants' objection to the participation of a district attorney from the Ninth Judicial District, where the indictment was returned against defendants in the Ninth District but where venue was changed to the Fourteenth District on defendants' motion. Daumer v. State, 381 So. 2d 1014, 1980 Miss. LEXIS 1872 (Miss. 1980).

A district attorney has no authority to represent the state in litigation outside his district, or to represent the state in litigation in his district where the subject matter is of statewide interest, as distinguished from local interest, and the fact that a district attorney may, with the consent of the Attorney General, bring suit to recover misappropriated county funds, does not limit or exclude the Attorney General's authority. State ex rel. Patterson v. Warren, 254 Miss. 293, 180 So. 2d 293, 1966 Miss. LEXIS 1592 (Miss. 1966).

The district attorney under the authority of this section has the right to maintain a suit to abate an alleged public nuisance involving a purely local public interest. State ex rel. Maples v. Quinn, 217 Miss. 567, 64 So. 2d 711, 1953 Miss. LEXIS 464 (Miss. 1953).

Where district attorney was serving three counties, he was not precluded from maintaining mandamus proceedings on behalf of one of such counties to compel motor vehicle comptroller to pay over certain funds to county out of gasoline tax collections in excess of the share which comptroller was willing to concede. McCullen v. State, 217 Miss. 256, 63 So. 2d 856, 1953 Miss. LEXIS 429 (Miss. 1953).

Where the statute provides that it shall be the duty of district attorney to appear in Circuit Court and prosecute for the state in his district all criminal prosecutions and civil cases in which the state or any county within his district may be interested and where it also provides that if two or more counties are adversely interested, district attorney should not represent either, the statute is general and covers civil cases as a general class, whereas, a statute authorizing district attorney to petition for mandamus in any matter affecting public interest is specific and constitutes exception to the general provision. McCullen v. State, 217 Miss. 256, 63 So. 2d 856, 1953 Miss. LEXIS 429 (Miss. 1953).

District attorney, without Attorney General's approval, held unauthorized to sue county supervisors to recover for county allegedly excessive salaries. Greaves v. Hinds County, 166 Miss. 89, 145 So. 900, 1933 Miss. LEXIS 331 (Miss. 1933).

District attorneys have no authority to represent state in litigation outside of counties of their district. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

State could not, on relation of district attorney, sue to restrain bus companies, having franchise from railroad commission to use highway, from continuing to use State highway, on ground they were wrongfully using highway to extent constituting public nuisance. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

A district attorney, in the absence of statutory authority, cannot by contract bind the county to pay for the chemical analysis of the stomach of a deceased person supposed to have been poisoned, although the analysis be a necessary aid to the enforcement of the criminal law. Jones v. Sunflower County, 84 Miss. 98, 36 So. 188, 1904 Miss. LEXIS 17 (Miss. 1904).

When a district attorney has performed all the official acts required of him preliminary to trial, it is not error to permit him to withdraw from the prosecution and leave the management of it to private counsel. Carlisle v. State, 73 Miss. 387, 19 So. 207, 1895 Miss. LEXIS 150 (Miss. 1895).

2. Incidental or implied powers.

All powers of a district attorney are statutory and include such incidental powers as necessarily attend the discharging of his statutory duties. Adams v. State, 202 Miss. 68, 30 So. 2d 593, 1947 Miss. LEXIS 243 (Miss. 1947).

3. Relation to Attorney General.

No statute authorized the Attorney General to prosecute a murder case in the place and stead of the district attorney, who had made a decision not to prosecute. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

The district attorney is required to obtain approval from the attorney general prior to bringing a civil action to recover an indebtedness to the county irrespective of the sources of the funds sought. Knott v. State, 731 So. 2d 573, 1999 Miss. LEXIS 23 (Miss. 1999).

A district attorney has no authority to represent the state in litigation outside his district, or to represent the state in litigation in his district where the subject matter is of statewide interest, as distinguished from local interest, and the fact that a district attorney may, with the consent of the Attorney General, bring suit to recover misappropriated county funds, does not limit or exclude the Attorney General's authority. State ex rel. Patterson v. Warren, 254 Miss. 293, 180 So. 2d 293, 1966 Miss. LEXIS 1592 (Miss. 1966).

Ousting of theater corporation, authorized to do business throughout the state, from the exercise of its rights and franchises anywhere in the state is a subject of state-wide interest, for which quo warranto may be brought only by the attorney general and not by a district attorney, although the particular ground of ouster is the violation of the Sunday law by theaters operated by corporation within the district, and this is true even though Code 1942, § 1121, expressly provides that quo warranto may be "by the attorney general or a district attorney," since this is not to be so construed as to disrupt natural division of authority between attorney general and district attorneys, under which former takes care of state matters and latter of local matters, especially in view of confusion which would necessarily follow from leaving matters of state interest in hands of the various district attorneys. Kennington-Saenger Theatres, Inc. v. State, 196 Miss. 841, 18 So. 2d 483, 1944 Miss. LEXIS 263 (Miss. 1944).

Powers of district attorneys are statutory, and they cannot encroach on powers of Attorney General. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

4. Matters outside district or of statewide concern.

Ousting of theater corporation, authorized to do business throughout the state, from the exercise of its rights and franchises anywhere in the state is a subject of state-wide interest, for which quo warranto may be brought only by the attorney general and not by a district attorney, although the particular ground of ouster is the violation of the Sunday law by theaters operated by corporation within the district, and this is true even though Code 1942, § 1121, expressly provides that quo warranto may be "by the attorney general or a district attorney," since this is not to be so construed as to disrupt natural division of authority between attorney general and district attorneys, under which former takes care of state matters and latter of local matters, especially in view of confusion which would necessarily follow from leaving matters of state interest in hands of the various district attorneys. Kennington-Saenger Theatres, Inc. v. State, 196 Miss. 841, 18 So. 2d 483, 1944 Miss. LEXIS 263 (Miss. 1944).

District attorney has no authority to represent the state in any litigation the subject matter of which is of state-wide interest as distinguished from local interest. Kennington-Saenger Theatres, Inc. v. State, 196 Miss. 841, 18 So. 2d 483, 1944 Miss. LEXIS 263 (Miss. 1944); Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

A district attorney has no authority to initiate and maintain a mandamus action for the benefit of a county located outside the territory of his district. State ex rel. Cowan v. State Highway Com., 195 Miss. 657, 13 So. 2d 614, 1943 Miss. LEXIS 120 (Miss. 1943).

District attorney of Hancock county, having instituted an action in such county against the state highway commission, had the right to follow the litigation out of his district and to maintain the action in Hinds county, where the commission had it transferred. State ex rel. Cowan v. State Highway Com., 195 Miss. 657, 13 So. 2d 614, 1943 Miss. LEXIS 120 (Miss. 1943).

Right to bring a mandamus action on behalf of Hancock county, to compel the state highway commission to appraise and reimburse such county for its proportionate value of a bridge, connecting Hancock and Harrison counties, which had been taken over by the commission, was not in the attorney general exclusively, but the district attorney of the judicial district in which Hancock county is located also had such right, and could maintain the action in Hinds county. State ex rel. Cowan v. State Highway Com., 195 Miss. 657, 13 So. 2d 614, 1943 Miss. LEXIS 120 (Miss. 1943).

5. District Attorney as peace officer.

A district attorney is not authorized to act as a peace officer. Adams v. State, 202 Miss. 68, 30 So. 2d 593, 1947 Miss. LEXIS 243 (Miss. 1947).

6. Trial in general.

Although wide latitude should be given in the cross-examination of witnesses, basic fairness requires that, before the state questions the accused as to whether he or she is guilty of a series of crimes unrelated to the charges being prosecuted, it have some basis in fact for such questioning. This would be the case even if the commission of such crimes were admissible evidence. Thus, where the record did not show any evidentiary basis to ask such questions, the state's conduct in cross-examining the defendant in a sexual battery prosecution about unrelated acts of deviant, sexual conduct with his stepchildren constituted reversible error even though the defense objection was sustained. Hosford v. State, 525 So. 2d 789, 1988 Miss. LEXIS 217 (Miss. 1988).

Although a prosecuting attorney is competent to testify, his testifying is not approved by the courts except where it is made necessary by the circumstances of the case, and, if he knows before the trial that he will be a necessary witness, he should withdraw and have other counsel prosecute the case; the propriety of allowing a prosecutor to testify is a matter largely within the trial court's discretion. Adams v. State, 202 Miss. 68, 30 So. 2d 593, 1947 Miss. LEXIS 243 (Miss. 1947).

Argument appealing to race prejudice is ground for reversal. Story v. State, 133 Miss. 476, 97 So. 806, 1923 Miss. LEXIS 154 (Miss. 1923).

Use in argument of impeaching hearsay testimony as substantive proof was improper prejudicial argument and constituted reversible error. Darby v. State, 121 Miss. 869, 84 So. 6, 1920 Miss. LEXIS 127 (Miss. 1920).

Erroneous statement of law in argument not prejudicial when not included in instruction. Carothers v. State, 121 Miss. 762, 83 So. 809, 1920 Miss. LEXIS 120 (Miss. 1920).

Reference by prosecuting attorney to mobs and mob law in trial of a Negro was improper. Williams v. State, 121 Miss. 433, 122 Miss. 151, 84 So. 8 (1919).

District attorney's statement to jury that defendant was vitally interested in verdict was questionable ethics, and technically inaccurate. Jennings v. State, 118 Miss. 619, 79 So. 814, 1918 Miss. LEXIS 109 (Miss. 1918).

In murder case district attorney's argument treating hearsay statements as evidence that defendant shot without provocation is improper. Hill v. State, 118 Miss. 170, 79 So. 98, 1918 Miss. LEXIS 77 (Miss. 1918).

Method used by district attorney in interrogating witnesses, appealing to the prejudices and impulses of the jurors by reliance for conviction upon the honor of Masonry and the dishonor of a bank failure was improper. Clark v. State, 113 Miss. 201, 74 So. 127, 1916 Miss. LEXIS 34 (Miss. 1916).

In a prosecution for crime the district attorney should not be permitted to read to the jury portions of the testimony as written out by the official stenographer. Davis v. State, 85 Miss. 416, 37 So. 1018, 1904 Miss. LEXIS 175 (Miss. 1904).

In a homicide case it is error to allow a district attorney who has been improperly allowed to introduce the direct testimony of a witness offered in rebuttal to fortify the testimony of such witness by that of himself in relation to and explanatory of previous statements made by the witness, and such error is not cured by the subsequent exclusion of the district attorney's testimony. Flowers v. State, 85 Miss. 591, 37 So. 814, 1904 Miss. LEXIS 153 (Miss. 1904).

The remark of a district attorney, on application for a continuance, that he would "admit the affidavit of the counsel as to what he expected to prove by an absent witness, but knew the witness would not swear to it," is reversible error, when made in the hearing of the jury. Lee v. State, 75 Miss. 625, 23 So. 628, 1898 Miss. LEXIS 41 (Miss. 1898).

If counsel prosecuting for the state, in his argument before the jury, comments upon the failure of defendant to testify in his own behalf, on appeal it will be ground for reversal and a new trial, although the court promptly rebuked counsel and instructed the jury to disregard the fact alluded to. Sanders v. State, 73 Miss. 444, 18 So. 541, 1895 Miss. LEXIS 79 (Miss. 1895).

7. —Calling witnesses.

The State must present all relevant evidence bearing on the defendant's guilt as part of its case-in-chief, not initially through cross-examination of the defendant and his or her witnesses, and then offering evidence of such conduct in rebuttal. No party should be permitted as a deliberate trial tactic to decide in advance of trial to withhold a part of his or her evidence case-in-chief, but to attempt to suggest such evidence in cross-examination of the witnesses for the opposing side, and then to offer the evidence in rebuttal. Hosford v. State, 525 So. 2d 789, 1988 Miss. LEXIS 217 (Miss. 1988).

It is for the prosecuting counsel and not the trial court to determine who shall be the state's witnesses on the hearing of a criminal charge and it is not error on the trial of one charged with seduction to refuse to require the prosecuting attorney to put the female alleged to have been seduced on the stand as a witness for the state. Carlisle v. State, 73 Miss. 387, 19 So. 207, 1895 Miss. LEXIS 150 (Miss. 1895).

The prosecution in a case of homicide is not bound to introduce all of the eyewitnesses of the killing who are marked as state witnesses on the indictment and present at the trial. Hale v. State, 72 Miss. 140, 16 So. 387, 1894 Miss. LEXIS 88 (Miss. 1894).

8. —Admissions.

District attorney's deliberate and solemn admission, during trial, of material fact in accused's favor, binds State. Sinclair v. State, 161 Miss. 142, 132 So. 581, 1931 Miss. LEXIS 235 (Miss. 1931).

9. —Review of improper conduct.

Improper argument should be embodied in bill of exceptions for review by Supreme Court. Elmore v. State, 143 Miss. 318, 108 So. 722, 1926 Miss. LEXIS 269 (Miss. 1926).

Unless objection thereto be made on the trial and a special bill of exceptions be taken and signed during the term, alleged improper argument in a criminal case by the prosecuting attorney will not be considered on appeal. Powers v. State, 83 Miss. 691, 36 So. 6, 1903 Miss. LEXIS 90 (Miss. 1904), overruled, Jones v. State, 144 Miss. 52, 109 So. 265, 1926 Miss. LEXIS 341 (Miss. 1926).

The test of reversible error in a criminal case because of improper statements by the prosecuting attorney in argument to the jury is whether the result reached would clearly and certainly have been the same notwithstanding the error. Brown v. State, 81 Miss. 143, 33 So. 170, 1902 Miss. LEXIS 158 (Miss. 1902).

OPINIONS OF THE ATTORNEY GENERAL

Inherent in district attorney's authority to hire victim assistance coordinator is authority to set coordinator's salary; senior circuit court judge is only to determine pro rata share of salary to be paid by counties. 1992 Miss. Op. Att'y Gen. 538.

County prosecuting attorney may represent county in civil forfeiture proceedings; compensation to be paid to county attorney for such services would have to be included in county attorney's salary. 1993 Miss. Op. Att'y Gen. 533.

Although there is authority for a municipal prosecutor to appear on behalf of the district attorney, pursuant to agreement, the rule does not operate in reverse. 1995 Miss. Op. Att'y Gen. 127.

RESEARCH REFERENCES

ALR.

Power of attorney or deputy prosecuting attorney to file information, or to sign or prosecute it in his own name. 80 A.L.R.2d 1067.

Disqualification of prosecuting attorney in state criminal case on account of relationship with accused. 42 A.L.R.5th 581.

Am. Jur.

63A Am. Jur. 2d, Prosecuting Attorneys §§ 22 et seq.

CJS.

27 C.J.S., District and Prosecuting Attorneys §§ 1 et seq., 21(1), 22(2).

§ 25-31-13. District attorney to attend deliberations of grand jury.

The district attorney shall attend the deliberations of the grand jury whenever he may be required by the grand jury, and shall give the necessary information as to the law governing each case, in order that the same may be presented in the manner required by law.

HISTORY:

Codes, Hutchinson's 1848, ch. 65, art 11 (1); 1857, ch. 6, art 70; 1871, § 214; 1880, § 256; 1892, § 1556; 1906, § 1663; Hemingway's 1917, § 1400; 1930, § 4364; 1942, § 3921.

Cross References —

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

Proceedings upon breach of peace bond, see § 99-23-19.

JUDICIAL DECISIONS

1. In general.

A circuit judge acting unilaterally in ex parte fashion without notice to the district attorney and without request of the grand jury lacked authority to bar the district attorney or his associates from a grand jury hearing investigated a report that the district attorney had failed to investigate and prosecute certain crimes. Necaise v. Logan, 341 So. 2d 91, 1976 Miss. LEXIS 1492 (Miss. 1976).

Burden was on accused, moving to quash indictment duly signed, presented and filed, to prove that twelve grand jurors did not concur, and that district attorney was in grand jury room when indictment was found; affidavits as to such facts being insufficient. Temple v. State, 165 Miss. 798, 145 So. 749, 1933 Miss. LEXIS 276 (Miss. 1933).

District attorney's presence in grand jury room when indictment is found is mere irregularity, for which indictment will not be quashed without showing of improper influence tainting it. Temple v. State, 165 Miss. 798, 145 So. 749, 1933 Miss. LEXIS 276 (Miss. 1933).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Prosecuting Attorneys §§ 21- 27.

§ 25-31-15. District attorney to pass on public accounts.

All accounts of a public nature, before they are allowed by the circuit court, shall be presented to the district attorney; and his opinion concerning the validity of the same, and whether the same should be allowed or disallowed, shall be obtained in writing and presented to the court.

HISTORY:

Codes, Hutchinson's 1848, ch. 22, art 3 (4); 1857, ch. 6, art 70; 1880, § 256; 1892, § 1557; 1906, § 1664; Hemingway's 1917, § 1401; 1930, § 4365; 1942, § 3922.

Cross References —

Duty of clerk of court to deliver list of allowances against county treasury to board of supervisors, see § 9-7-129.

Disposition of claims by board of supervisors, see § 19-13-31.

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

JUDICIAL DECISIONS

1. In general.

One petitioning circuit court for allowance of mileage for returning fugitives under governor's requisition, is not required by virtue of this section to first file his claim with the district attorney, but such section does require that the judge must ask the advice of the district attorney before allowing the claim, and, until the court does so, the court has no authority to allow or disallow the claim, so that a judgment denying the petition is tantamount merely to an erroneous dismissal of the claim and not a final judgment on its merits. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

While circuit court has no authority to allow or disallow a claim until it has first sought the advice of the district attorney, the latter's approval or disapproval is not binding upon the court and the allowance or disallowance of the claim is ultimately committed to the judgment of the court, although in respect to a claim against the county, such as mileage for returning fugitives under governor's requisition, the claim may be contested by the district attorney in the circuit court on behalf of the county. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Prosecuting Attorneys §§ 21- 27.

§ 25-31-17. District attorney to give opinions and prosecute public debtors.

It shall be the duty of the district attorney, when requested by the county depository or the board of supervisors, or the clerk thereof, to give his opinion in writing upon all cases concerning the revenue or expenses of the county, and with the approval of the Attorney General to institute and prosecute to effect, before the proper court, all persons indebted to the state or any county within his district.

HISTORY:

Codes, Hutchinson's 1848, ch. 22, art 3 (4); 1857, ch. 6, art 71; 1880, § 257; 1892, § 1558; 1906, § 1665; Hemingway's 1917, § 1402; 1930, § 4366; 1942, § 3923.

Cross References —

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

Duty of Attorney General and district attorneys to represent state tax commission, see § 25-31-19.

JUDICIAL DECISIONS

1. In general.

District attorney, with approval of attorney general, was authorized to maintain suit on behalf of county or district thereof against member of board of supervisors and his surety for unlawfully permitting a tractor and other construction equipment belonging to the county to be used for benefit of private individuals, to recover loss to the county arising from depreciation of such equipment, the illegal use of gasoline and oil, and the expenditure of considerable sums for wages to its employees. Shumpert v. Lee County, 197 Miss. 513, 20 So. 2d 82, 1944 Miss. LEXIS 316 (Miss. 1944).

District attorney, without Attorney General's approval, was unauthorized to sue county supervisors to recover for county allegedly excessive salaries. Greaves v. Hinds County, 166 Miss. 89, 145 So. 900, 1933 Miss. LEXIS 331 (Miss. 1933).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Prosecuting Attorneys §§ 21- 27.

§ 25-31-19. To represent state tax and public service commissions.

The several district attorneys, with the Attorney General, are hereby authorized to institute or defend any suits arising out of any act or order of the tax commission or the public service commission affecting the laws and revenues of the state, and are also clothed with such other authority as is conferred upon them at common law.

HISTORY:

Codes, Hemingway's 1921 Supp, § 3488a; 1930, § 3673; 1942, § 3844; Laws, 1918, ch. 238.

Editor's Notes —

Section 27-3-4 provides that the term "Tax Commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Tax Commission shall mean the Department of Revenue.

Cross References —

Department of Revenue, generally, see § 27-3-1.

Duty of Attorney General to represent Department of Revenue, see § 27-33-49.

JUDICIAL DECISIONS

ANALYSIS

1. Powers and authority generally.
2. Common law powers.
3. Appeal.

1. Powers and authority generally.

District attorney is not prohibited from bringing civil tax matters before a grand jury, and arguably has a duty to do so, particularly in light of the fact that the legislature has vested district attorneys and grand juries with authority to investigate a variety of civil matters. Entergy Miss., Inc. v. State, 132 So. 3d 568, 2014 Miss. LEXIS 120 (Miss. 2014).

The attorney general is a constitutional officer possessed of all the power and authority vested in such an official at common law, and, in addition, such as have been conferred upon him by statute, including the right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order, and protection of public rights, which right is not confined to enforcement of the criminal laws but applies also to all matters of state-wide public interest in any of the courts of the state. Dunn Const. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166, 3 So. 2d 834, 1941 Miss. LEXIS 127 (Miss. 1941).

Powers of district attorneys are statutory, and they cannot encroach on powers of attorney general. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

As to litigation, subject matter of which is of state-wide interest, attorney general alone has right to represent state. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

District attorneys have no authority to represent state in litigation outside of counties of their district. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

District attorney has no authority to represent state in litigation involving subject matter of state-wide interest, as distinguished from local interest, except as provided by statutory clause relating to actions to enforce penalties, etc. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

2. Common law powers.

Statute was effective to confer on attorney general common law powers. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

3. Appeal.

Attorney General may appeal as an incident connected with prosecution for defense of suit under this section. Board of Sup'rs v. Guaranty Loan, Trust & Banking Co., 118 Miss. 600, 79 So. 802, 1918 Miss. LEXIS 102 (Miss. 1918).

Attorney general may bring appeal although judgment was entered prior to passage of this section. Board of Sup'rs v. Guaranty Loan, Trust & Banking Co., 118 Miss. 600, 79 So. 802, 1918 Miss. LEXIS 102 (Miss. 1918).

§ 25-31-21. Pro tempore appointment and compensation of appointees.

If, at the time of impaneling the grand jury in any circuit court, the district attorney be absent or unable to perform his duties or, if after impaneling of the grand jury, the district attorney be absent or unable to perform his duties or be disqualified, the court shall forthwith appoint some attorney at law to act for the state in the place of the district attorney during his absence or inability or disqualification, and the person appointed shall have the power to discharge all the duties of the office during the absence or inability or disqualification of the district attorney, and shall receive a reasonable compensation for his services, to be allowed by the court and certified to the auditor, who shall issue his warrant therefor. Such allowance shall be deducted from the salary of the district attorney, and shall not exceed the amount of the salary of the district attorney for the number of days allotted by law for the term of the court at which such appointees shall act.

HISTORY:

Codes, Hutchinson's 1848, ch. 65, art 11 (3); 1857, ch. 6, art 72; 1871, § 216; 1880, § 258; 1892, § 1559; 1906, § 1666; Hemingway's 1917, § 1403; 1930, § 4367; 1942, § 3924; Laws, 1898, ch. 58.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Deduction from salary of judge for absence from court, see § 25-3-57.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.
3. Compensation.
4. Judge's conduct.

1. In general.

A trial court should have disqualified the district attorney's office from prosecuting the defendant and appointed a district attorney pro tempore, where an assistant district attorney had previously been a public defender and had represented the defendant for approximately 11 months, the assistant district attorney discussed the case with the defendant's new appointed counsel, the assistant district attorney made no attempt to indicate to the defendant's attorney that he would not be participating in the case, at no time thereafter until the day of trial did the district attorney's office notify the defendant's attorney that the assistant district attorney had not breached any confidences and would not participate in the case, and the prosecuting district attorney's statements for the record asserting that he had not acquired any knowledge or information concerning the case from the assistant district attorney had no legal effect because it was not made under oath. Aldridge v. State, 583 So. 2d 203, 1991 Miss. LEXIS 436 (Miss. 1991).

Where, during the course of a homicide trial, the district attorney became ill and unable to continue with the prosecution of the case, appointment of a county prosecuting attorney, who had assisted in the trial from the beginning, to continue the trial, was not error, such appointment being not only authorized by law but the logical and appropriate thing to be done under the circumstances. Wilson v. State, 234 So. 2d 303, 1970 Miss. LEXIS 1404 (Miss. 1970).

The intent of the statute authorizing the court to appoint an attorney to act for the state in place of the district attorney, is to avoid the delay, burden and expense of an additional trial due to the absence of the district attorney. Wilson v. State, 234 So. 2d 303, 1970 Miss. LEXIS 1404 (Miss. 1970).

Pro tempore appointment of a district attorney should be made when the regular incumbent is a witness in a criminal trial. Adams v. State, 202 Miss. 68, 30 So. 2d 593, 1947 Miss. LEXIS 243 (Miss. 1947).

Defendant in murder prosecution held not prejudiced because indictment returned was signed by duly appointed and acting district attorney pro tem. Fairley v. State, 163 Miss. 682, 138 So. 330, 1931 Miss. LEXIS 5 (Miss. 1931).

Duly licensed attorney was not disqualified to act as district attorney pro tem., because he was regularly elected and qualified district attorney of another circuit court district. Fairley v. State, 163 Miss. 682, 138 So. 330, 1931 Miss. LEXIS 5 (Miss. 1931).

Where wife of deceased was niece of district attorney, he properly recused himself and took no part in investigation of killing, even if not legally disqualified. Fairley v. State, 163 Miss. 682, 138 So. 330, 1931 Miss. LEXIS 5 (Miss. 1931).

2. Applicability.

No statute authorized the Attorney General to prosecute a murder case in the place and stead of the district attorney, who had made a decision not to prosecute. The record was wholly void of any of the specified statutory bases for the appointment of a district attorney pro tempore. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

3. Compensation.

Const. 1890 § 174, providing that district attorneys shall be paid a fixed salary, does not prevent the legislature from authorizing deduction from their salary for neglect of official duty, whether from sickness or other causes. Cole v. Humphries, 78 Miss. 163, 28 So. 808, 1900 Miss. LEXIS 85 (Miss. 1900).

4. Judge's conduct.

Performance of any of duties of prosecuting attorney in grand jury room by circuit judge is wholly incompatible with the functions of the judge's office, and is contrary to the purpose of the judicial system in the administration of criminal law. Sanders v. State, 198 Miss. 587, 22 So. 2d 500, 1945 Miss. LEXIS 231 (Miss. 1945).

Statements by circuit judge dictated into record that he informed grand jury that, because of absence of district attorney due to illness in his family, the circuit judge would advise the grand jury, and would generally perform the duties of district attorney pending the latter's arrival at court, that circuit judge returned to the grand jury room after they had organized, ran over the docket with them, requested them to take up a particular homicide case, was in the grand jury room when the sheriff exhibited the weapon used in the homicide and heard the sheriff's testimony, but that the circuit judge took particular pains not to express an opinion as to what the grand juror's presentment should be, as well as not to be in the grand jury room when they discussed the evidence and voted upon indictments, constituted an adverse ruling on motion to quash the particular homicide indictment on grounds that circuit judge acted as district attorney and his presence in the grand jury room, in view of fact that the court immediately proceeded to try the case on its merits under such indictment. Sanders v. State, 198 Miss. 587, 22 So. 2d 500, 1945 Miss. LEXIS 231 (Miss. 1945).

Murder indictment was quashed for conduct of circuit judge in entering grand jury room and informing grand jurors that, because of absence of district attorney due to illness in his family, the circuit judge would perform the duties of district attorney pending the latter's arrival at court, in running over dockets with grand jurors and requesting them to take up the murder case in question, and being in grand jury room when sheriff exhibited weapon used in the homicide and heard the sheriff's testimony, notwithstanding that the circuit judge was actuated by the best of motives and took particular pains not to express an opinion as to what their presentment should be, and was not in the grand jury room when the grand jurors discussed the evidence and voted upon the indictment. Sanders v. State, 198 Miss. 587, 22 So. 2d 500, 1945 Miss. LEXIS 231 (Miss. 1945).

RESEARCH REFERENCES

Am. Jur.

63A Am. Jur. 2d, Prosecuting Attorneys §§ 8-11.

§ 25-31-23. Duty as to fines.

The district attorney, at each term of the circuit court, shall carefully examine the minutes of the preceding terms and the execution docket, to see that executions have been issued for all fines, penalties, and forfeitures adjudged at such terms, and that the same have been properly proceeded on and returned, and what fines, penalties, and forfeitures have been collected; and he shall, at the close of every term, make out a statement of all fines, forfeitures, and penalties adjudged and made final at such term; and also of all fines, penalties, and forfeitures collected or received by the sheriff or other officer, stating each case and the amount, and shall deliver the same to the clerk of the board of supervisors of the county. He shall proceed against the officers and their sureties for any neglect of duty of which they may be guilty.

HISTORY:

Codes, 1857, ch. 61, art. 309; 1880, § 1789; 1892, § 1560; 1906, § 1667; Hemingway's 1917, § 1404; 1930, § 4368; 1942, § 3925.

Cross References —

Collection of fines and penalties, see § 11-7-217.

Authorization of custodian of books to certify copies, see § 13-1-77.

Creation of office of criminal records in certain counties, see § 25-31-31.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Prosecuting Attorneys §§ 21- 27.

§ 25-31-25. District attorney to institute and prosecute suits to vacate fraudulent conveyances.

When it may be necessary and proper for the enforcement or collection of any judgment or debt in favor of the state, or any officer thereof in his official capacity, or of any county, the district attorney with the approval of the attorney general shall institute and prosecute, in behalf of the creditor, a suit or suits to set aside and annul any conveyance or other device fraudulently made by the debtor, or any one for him, to hinder, delay, or defraud the creditor.

HISTORY:
Codes, 1892, § 1561; 1906, § 1668; Hemingway's 1917, § 1405; 1930, § 4369; 1942, § 3926.

Cross References —
Authorization of Attorney General to institute and prosecute suits to vacate fraudulent conveyances, see § 7-5-35.

Authority to institute and prosecute suits to cancel fraudulently obtained land patents, see § 29-1-9.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Prosecuting Attorneys §§ 21- 27.

§ 25-31-27. Antitrust suits to require consent of Attorney General.

No district attorney of this state, without the consent in writing of the attorney general, shall institute or prosecute any civil suit for a violation of the antitrust statutes of this state; and no court shall take cognizance of any such suit without such written consent of the Attorney General.

HISTORY:
Codes, 1930, § 4370; 1942, § 3927; Laws, 1922, ch. 274.

Cross References —
Duties of district attorneys in enforcing antitrust laws, see § 75-21-37.

§ 25-31-29. Reports on persons sentenced to state penitentiary.

The district attorneys of the several circuit court districts in the State of Mississippi shall furnish the superintendent of the Mississippi state penitentiary and the probation and parole board, within fifteen days after adjournment of each term of court, a written report on each person sentenced by the court for a term in the state penitentiary, showing therein a summary of facts of the case for which he is serving sentence, pertinent circumstances of his life, the antecedents of the violation of the law because of which he has been committed to the penitentiary, and his prior training and employment as available to the district attorney at the time of conviction, including prior convictions, results of mental examinations, and conditions under which arrest was made.

HISTORY:
Codes, 1942, § 3927.5; Laws, 1966, ch. 391, § 1, eff from and after passage (approved June 2, 1966).

§ 25-31-31. Office of criminal records.

(1) In any circuit court district bordering on the Gulf Coast wherein U.S. Highway 90 and U.S. Highway 49 intersect, there is hereby created and

established the Office of Criminal Records of such district or districts, the affairs of which office shall be managed and controlled by a custodian to be appointed by the senior circuit judge of the district or districts, said appointment to be approved by the district attorney of said district or districts. Said custodian shall be directly responsible to the district attorney and may be removed only by the unanimous consent of the senior circuit judge and the district attorney, and in case of a controversy between said senior circuit judge and district attorney as to the removal of said custodian, then the circuit clerk of said district or districts shall decide the issue.

(2) It shall be the duty of said custodian to perform the duties of maintaining all records of outstanding capiases issued on indictments returned in the circuit court of said district or districts, and to assist the district attorney in the collections of all fines and forfeitures due, in accordance with the duties imposed upon the district attorney's office in Section 25-31-23. The custodian shall be an adult resident citizen of said district or districts, and shall in addition to other duties imposed herein be required to assist in the preparation of the grand jury dockets, the record for extradition of criminals throughout the State of Mississippi, the coordination of law enforcement problems by and between the sheriffs' offices and the various municipalities, constables, military police, and other peace officers of said district or districts, and to assist all said peace officers, under the direction of the duly elected district attorney of said district or districts, and the county attorneys thereof in investigation of criminal cases and the coordination of the work of investigation between local, state, and federal officers.

(3) It shall be the duty of the person so appointed to assist in the orderly transfer under the direction of the district attorney's office of all criminal records whenever there shall be a change in administration in the sheriffs' offices so as to effect the continuity of the prosecution on the part of the State of Mississippi, and to continue the pursuit of those persons charged with crimes within the said district or districts who have not been apprehended and returned for prosecution and punishment.

(4) The annual salary of such custodian shall be fixed by a majority of the boards of supervisors of the counties composing such district or districts and shall not exceed the annual salary allowed to criminal investigators in the county, payable monthly from the general fund of each county composing such district or districts in proportion to the amount of criminal business and uniform reciprocal support cases originating in each county. The boards of supervisors may pay such other expenses to effectuate the purposes of this section as they may deem necessary to public justice. Said expenses shall be upon requisition of the district attorney, payable in the discretion of the boards.

(5) It is the purpose and intent of this section to enable the collection of fines and forfeitures, as well as to coordinate the orderly investigation, apprehension, prosecution, sentence, and punishment of those persons charged with crimes within such district or districts.

(6) The records compiled by the office created hereunder shall be the property of the district and shall be transferred by the district attorney to his successor in office.

HISTORY:

Codes, 1942, § 3927.9; Laws, 1968, ch. 381; Laws, 1975, ch. 366; Laws, 1983, ch. 415; Laws, 1992, ch. 404 § 1, eff from and after passage (approved April 27, 1992).

Cross References —

Exemption of certain attorneys' work products from requirement of public access, see § 25-1-102.

§ 25-31-33. Certain counties to contribute toward salaries of district attorneys and legal assistants.

The board of supervisors of any county having a population in excess of two hundred thousand (200,000) according to the federal decennial census of 1970 shall contribute a sum equal to Four Thousand Five Hundred Dollars ($4,500.00) per year, payable monthly, to supplement the salary of the district attorney of that county, provided that he serves full time; and shall contribute a sum equal to Three Thousand Dollars ($3,000.00) per year, payable monthly, per full-time legal assistant to supplement the salary of each full-time legal assistant to the district attorney of that county.

The board of supervisors of any Class 1 county bordering on the Gulf of Mexico and having two (2) judicial districts shall contribute a sum equal to Four Thousand Five Hundred Dollars ($4,500.00) per year, payable monthly, to supplement the salary of the district attorney of that county provided that he serves full time; and shall contribute a sum equal to Five Thousand Dollars ($5,000.00) per year, payable monthly, to supplement the salary of each full-time legal assistant to the district attorney of that county.

HISTORY:

Laws, 1977, ch. 453, § 1; Laws, 1992, ch. 396 § 7, eff from and after passage (approved April 27, 1992).

§ 25-31-35. District attorneys shall not engage in private practice; exception.

(1) Except as otherwise provided in subsection (2) of this section, it shall be unlawful and shall constitute a high misdemeanor for any district attorney to hold himself out to the general public or otherwise as being engaged in the private practice of law, whether or not he anticipates receiving any form of remuneration from his clients or any person seeking his advice. Any district attorney who shall be found guilty of violation of this provision shall be removed from office by the circuit judge of the county where such violation occurred.

(2) Any person not serving as a legal assistant to the district attorney who is appointed by the Governor to serve as district attorney to fill a vacancy occurring in such office until such office shall be filled by a special or regular election as provided by Sections 23-15-193, 23-15-833 and 23-15-843 shall be allowed to engage in the private practice of law while holding the office of district attorney pursuant to such appointment.

HISTORY:

Laws, 1977, ch. 453, § 7; Laws, 1983, ch. 322, § 1; Laws, 1992, ch. 396 § 8, eff from and after passage (approved April 27, 1992).

OPINIONS OF THE ATTORNEY GENERAL

Sections 25-31-35 and 25-31-36 are not violated simply by receiving a fee for services rendered prior to becoming District Attorney. Webb, November 1, 1996, A.G. Op. #96-0626.1996 Miss. Op. Att'y Gen. 735.

A special prosecutor appointed pursuant to court order may represent criminal defendants in counties outside the circuit court district in which he is specially appointed. 1998 Miss. Op. Att'y Gen. 618.

It is the intent of the legislature that a legal assistant to a district attorney devote his legal talents exclusively to the district attorney and the people of the district in which he serves. 2003 Miss. Op. Att'y Gen. 518.

§ 25-31-36. Right of district attorney to conclude civil cases pending at time of taking office; practice by appointees pending filling of vacancy by election.

(1) Except as otherwise provided herein, no district attorney shall engage in the private practice of law. However, district attorneys may continue to practice for a period of time, not to exceed six (6) months from the date of taking office, in any of the courts so far as to enable them to bring to a conclusion civil cases actually pending in which such district attorneys were employed when they were appointed or elected.

(2) Any person not serving as a legal assistant to the district attorney who is appointed by the Governor to serve as district attorney to fill a vacancy occurring in such office until such office shall be filled by a special or regular election as provided by Sections 23-15-193, 23-15-833 and 23-15-843 shall be allowed to engage in the private practice of law while holding the office of district attorney pursuant to such appointment.

HISTORY:

Laws, 1979, ch. 490, § 3; Laws, 1983, ch. 322, § 2; Laws, 1992, ch. 396 § 9, eff from and after passage (approved April 27, 1992).

OPINIONS OF THE ATTORNEY GENERAL

Sections 25-31-35 and 25-31-36 are not violated simply by receiving a fee for services rendered prior to becoming District Attorney. Webb, November 1, 1996, A.G. Op. #96-0626.1996 Miss. Op. Att'y Gen. 735.

It is the intent of the legislature that a legal assistant to a district attorney devote his legal talents exclusively to the district attorney and the people of the district in which he serves. 2003 Miss. Op. Att'y Gen. 518.

§ 25-31-37. Repealed.

Repealed by Laws, 1992, ch. 396, § 11, eff from and after passage (approved April 27, 1992).

[Laws, 1978, ch. 520, § 5, eff from and after July 1, 1978.]

Editor's Notes —

Former Section 25-31-37 provided a procedure by which a part-time district attorney could become a full-time district attorney.

§ 25-31-39. Abolition of part-time district attorneys and part-time legal assistants; exception.

There shall be no part-time district attorneys or part-time legal assistants to district attorneys; however, any person not serving as a legal assistant to the district attorney who is appointed by the Governor to serve as district attorney to fill a vacancy occurring in such office until such office shall be filled by a special or regular election as provided by Sections 23-15-193, 23-15-833 and 23-15-843 shall be allowed to engage in the private practice of law while holding the office of district attorney pursuant to such appointment.

HISTORY:

Laws, 1978, ch. 509, § 10; Laws, 1983, ch. 322, § 3; Laws, 1992, ch. 396 § 10, eff from and after passage (approved April 27, 1992).

OPINIONS OF THE ATTORNEY GENERAL

A special prosecutor appointed pursuant to court order may represent criminal defendants in counties outside the circuit court district in which he is specially appointed. 1998 Miss. Op. Att'y Gen. 618.

§ 25-31-41. District Attorneys Operation Fund created; source of money; use of funds; funding of district attorneys' expenses; deposit of user charges and fees authorized by Section 99-19-72(1)(a) and (b) into State General Fund.

(1) There is created in the State Treasury a special fund designated as the District Attorneys Operation Fund. The funds shall be administered by the Attorney General. The fund shall consist of monies deposited therein as provided in Section 99-19-72 and monies from any other source designated for deposit into the fund. The Attorney General may also accept monies from any public or private source for deposit into the fund. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund.

(2) Monies in the fund shall be subject to appropriation by the Legislature and may only be used for the purpose of assisting district attorneys as determined necessary by the Attorney General. Monies in the fund used for the purposes described in this section shall be in addition to other funds available from any other source for such purposes.

(3) From and after July 1, 2016, the expenses of district attorneys shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized by Section 99-19-72(1)(a) and (b) shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer, and charges and fees authorized by Section 99-19-72(1)(c) shall be retained by the circuit clerks for expenditures authorized by law.

HISTORY:

Laws, 2010, ch. 561, § 3; Laws, 1st Ex Sess, 2017, ch. 7, § 11, eff from and after passage (approved June 23, 2017).

Amendment Notes —

The 2017 amendment, effective June 23, 2017, added (3).

§ 25-31-43. Retention of one service-issued sidearm by district attorney, legal assistant to district attorney or criminal investigator employed by district attorney upon retirement.

Any district attorney, legal assistant to a district attorney or criminal investigator employed by a district attorney who retires under the Public Employees' Retirement System for superannuation or for reason of disability shall be allowed to retain, as his personal property, one (1) sidearm which was issued under authority of Section 97-37-7. The replacement cost of the sidearm shall come from funds appropriated to the district attorney other than those funds appropriated from State General Funds.

HISTORY:

Laws, 2011, ch. 535, § 2, eff from and after July 1, 2011.

CHAPTER 32.

PUBLIC DEFENDERS

In General. 25-32-1
Statewide Public Defender System Act [Repealed]. 25-32-31
Mississippi Public Defender Task Force [Repealed]. 25-32-71

Cross References —

Representation provided for indigent defendants in capital cases, see §§ 99-18-1 et seq.

Office of Indigent Appeals, see § 99-40-1.

IN GENERAL

Sec.	
25-32-1.	Establishment of office by board of supervisors.
25-32-3.	Circuit judge shall appoint public defender for county; assistant public defender.
25-32-5.	Compensation; private practice of law.
25-32-7.	Office and office expenses; payment of compensation and expenses.
25-32-9.	Affidavit of indigency; statement of assets; representation of persons in need of mental treatment.
25-32-11.	Duties; free access to accused.
25-32-13.	Appointment of counsel by court in conflict of interest cases; appointment of additional counsel where necessary.
25-32-15.	Termination of office.
25-32-17.	Compensation, staff, office space, and secretarial assistance not to be reduced; authority to increase.
25-32-19.	Obtaining financial, professional, investigatory, research, or other assistance.
25-32-21.	Repealed.

§ 25-32-1. Establishment of office by board of supervisors.

Should the board of supervisors of any county or the boards of supervisors of two (2) or more counties in the same circuit court district determine by order spread upon their minutes that the county or counties have a sufficient number of indigent defendant cases to establish an office of public defender, the board of supervisors or boards of supervisors are authorized and empowered, in their discretion, to establish the office, provide office space, personnel and funding for the office, and to perform any and all functions necessary for the efficient operation of such an office to the end that adequate legal defense for indigent persons accused of crime shall be provided at every critical stage of their cases as an alternative to court appointed counsel. Said order shall specify whether the public defender shall be full-time or part-time.

HISTORY:

Laws, 1979, ch. 509, § 1, eff from and after October 1, 1979.

Editor's Notes —

Laws of 1979, ch. 509, § 11, effective from and after October 1, 1979, provides:

"SECTION 11. This act shall not affect counties which presently have public defender offices in operation on October 1, 1979, but shall be supplemental and cumulative to all local and private acts."

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

Cross References —

Exemption of certain attorneys' work product from requirement of public access, see § 25-1-102.

For creation of task force to study the need for state-supported indigent defense counsel and to examine existing public defender programs, see § 25-32-71.

OPINIONS OF THE ATTORNEY GENERAL

Under Sections 25-32-1 and 25-32-3, the board of supervisors may establish a public defender's office with a part-time public defender and a part-time assistant public defender. However, it shall be the duty of the public defender to select and appoint any assistant public defenders authorized by the board of supervisors. 1995 Miss. Op. Att'y Gen. 611.

If a county has established an office of public defender under § 25-32-1 et seq., a justice court judge has the authority to order the public defender to represent an indigent criminal defendant on a misdemeanor charge that may lead to the defendant being incarcerated. 1998 Miss. Op. Att'y Gen. 711.

The Code of Judicial Conduct prohibits a person from simultaneously serving as a justice court judge and public defender. 2002 Miss. Op. Att'y Gen. 556.

Part-time public defenders are county employees and afforded coverage under the Tort Claims Act while acting in the course and scope of their employment. 2003 Miss. Op. Att'y Gen. 383.

The determination of whether a county has established an office of public defender in accordance with Section 25-32-1 can be made by examining the minutes of the board of supervisors. 2006 Miss. Op. Att'y Gen. 293.

There is no statutory requirement that a county register its office of public defender with a central organization, association or agency. 2006 Miss. Op. Att'y Gen. 293.

A duly appointed public defender would be considered an appointed county officer. 2006 Miss. Op. Att'y Gen. 293.

Assistant public defenders, appointed in accordance with Section 25-32-3, who are paid a regular salary by the county, monthly or otherwise, would be considered county employees. 2006 Miss. Op. Att'y Gen. 293.

RESEARCH REFERENCES

ALR.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Am. Jur.

21A Am. Jur. 2d, Criminal Law §§ 809, 810.

Practice References.

Young, Trial Handbook for Mississippi Lawyers § 1:2.

§ 25-32-3. Circuit judge shall appoint public defender for county; assistant public defender.

(1) When the office of public defender is established, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint a practicing attorney to serve the county or counties as public defender until the end of the term of office of the district attorney and thereafter for a term of four (4) years and said term shall coincide with the term of the district attorney. Such appointee shall be selected from a list of two (2) or more

attorneys recommended by the county or regional bar association. In the event a vacancy shall occur in the office of the public defender, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint another person to serve as public defender until the end of the regular term of office.

(2) Assistant public defenders may be authorized by the board of supervisors, or boards of supervisors if two (2) or more counties are acting jointly. The public defender shall appoint all assistant public defenders. Such assistant public defenders may be compensated in such an amount as may be authorized by the respective board of supervisors; provided, however, that in no case may such assistant public defenders receive compensation in an amount greater than that received by the public defender.

HISTORY:

Laws, 1979, ch. 509, § 22, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

OPINIONS OF THE ATTORNEY GENERAL

Duly appointed public defender may not delegate his or her duties and responsibilities to any other than duly and lawfully appointed assistant public defender. 1992 Miss. Op. Att'y Gen. 848.

Under Sections 25-32-1 and 25-32-3, the board of supervisors may establish a public defender's office with a part-time public defender and a part-time assistant public defender. However, it shall be the duty of the public defender to select and appoint any assistant public defenders authorized by the board of supervisors. 1995 Miss. Op. Att'y Gen. 611.

If the board of supervisors authorizes additional assistant public defenders, they are to be appointed by the public defender and the public defender has the authority to establish the duties and responsibilities of each assistant public defender to include who will be responsible for handling misdemeanor cases and/or preliminary hearings in justice court; there is no statutory authority for two separate county public defenders, one for circuit court and one for justice court. 2003 Miss. Op. Att'y Gen. 261.

RESEARCH REFERENCES

ALR.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

§ 25-32-5. Compensation; private practice of law.

Compensation for the public defender shall be fixed by the board of supervisors or boards of supervisors, if two (2) or more counties are acting jointly; provided, however, the compensation for a public defender, who shall be full-time, representing an entire circuit court district shall not be less than the compensation of the district attorney, the compensation for a public defender representing one (1) county shall not be less than the compensation of the county prosecuting attorney and the compensation for a public defender representing two (2) or more counties, but less than the entire circuit court district, shall not be less than the aggregate of the compensation for county prosecuting attorneys of the counties served, but in no event to exceed the compensation of the district attorney. No full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law. Part-time public defenders or part-time assistant public defenders may engage in the private practice of the law as long as such practice does not relate to the prosecution of criminal matters.

HISTORY:

Laws, 1979, ch. 509, § 3, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

RESEARCH REFERENCES

ALR.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Right of public defenders to join collective bargaining unit. 108 A.L.R.5th 241.

§ 25-32-7. Office and office expenses; payment of compensation and expenses.

(1) The public defender shall be provided with office space, secretarial assistance, and all reasonable expenses of operating the office, at least equal to or more than the county prosecuting attorney, or the district attorney if the public defender represents the entire circuit court district. The compensation and expenses of the public defender's office shall be paid by the county or counties if two (2) or more counties are acting jointly. The funds shall be paid upon allowance by the board of supervisors by order spread upon the minutes of the board.

(2) The public defender is authorized to assign the duties of and exercise supervision over all employees of the office without regard to the source of funding for those employees.

HISTORY:

Laws, 1979, ch. 509, § 4; Laws, 2014, ch. 414, § 1, eff from and after passage (approved March 21, 2014).

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

JUDICIAL DECISIONS

1. Constitutionality.

County was properly denied declaratory judgment that Miss. Code Ann. §§ 25-32-7, and 99-15-17, requiring counties to provide legal services for indigent criminal defendants violated Miss. Const. Art. III, § 26 because the county did not show specific examples of when public defenders' legal representation fell below the objective standard of professional reasonableness. Quitman County v. State, 910 So. 2d 1032, 2005 Miss. LEXIS 438 (Miss. 2005).

RESEARCH REFERENCES

ALR.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

§ 25-32-9. Affidavit of indigency; statement of assets; representation of persons in need of mental treatment.

(1) When any person shall be arrested and charged with a felony, a misdemeanor or an act of delinquency, then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the public defender shall represent said person unless the right to counsel be waived by such person. Provided further, a statement shall be executed by the alleged indigent, under oath, listing all assets available to the indigent for the payment of attorney's fees, including the ownership of any property, real or personal, and setting out therein the alleged indigent's employment status, number of dependents, income from any source, the ability of his parents or spouse to provide an attorney's fee, and any other information which might prove or disprove a finding of indigency. The affidavit and statement shall be a part of the record in the case and shall be subject to review by the appropriate court. Based on review of the affidavit, statement or other appropriate evidence, if the appropriate court finds that the defendant is not indigent, said court shall terminate the representation of the defendant by the public defender.

When any person shall be arrested and charged with a misdemeanor, the presiding judge or justice, upon determination that the person is indigent as provided in this section, and that representation of the indigent is required, shall appoint the public defender whose duty it shall be to provide such representation. No person determined to be an indigent as provided in this section shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel.

(2) The accused shall have such representation available at every critical stage of the proceedings against him where a substantial right may be affected.

(3) The public defender shall also represent persons in need of mental treatment, as provided under Sections 41-21-61 et seq. The chancery court may tax costs as provided in Sections 41-21-79 and 41-21-85.

HISTORY:

Laws, 1979, ch. 509, § 5; Laws, 1980, ch. 518, eff from and after July 1, 1980.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

Cross References —

Rights of criminal accused, see Miss. Const. Art. 3, § 26.

Appointment of counsel for indigents, see § 99-15-15.

OPINIONS OF THE ATTORNEY GENERAL

An indigent defendant charged with a misdemeanor is entitled to legal representation by the public defender where a substantial right may be affected, e.g., when the defendant faces imprisonment for any length of time. Belk, Jr., 2000 Miss. Op. Att'y Gen. 360.

The determination of whether a county has established an office of public defender in accordance with Section 25-32-1 can be made by examining the minutes of the board of supervisors. 2006 Miss. Op. Att'y Gen. 293.

RESEARCH REFERENCES

ALR.

Duty to advise accused as to right to assistance of counsel. 3 A.L.R.2d 1003.

Right of indigent defendant in criminal case to aid of state as regards new trial or appeal. 55 A.L.R.2d 1072.

Comment Note.—Constitutionally protected right of indigent accused to appointment of counsel in state court prosecution. 93 A.L.R.2d 747.

Accused's right to assistance of counsel at or prior to arraignment. 5 A.L.R.3d 1269.

Scope and extent, and remedy or sanctions for infringement, of accused's right to communicate with his attorney. 5 A.L.R.3d 1360.

Comment Note.—Necessity of informing suspect of his rights under privilege against self-incrimination, prior to police interrogation. 10 A.L.R.3d 1054.

Right of indigent defendant in criminal case to aid of state by appointment of investigator or expert. 34 A.L.R.3d 1256.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Determination of indigency of accused entitling him to appointment of counsel. 51 A.L.R.3d 1108.

Indigent accused's right to choose particular counsel appointed to assist him. 66 A.L.R.3d 996.

Public defender's immunity from liability for malpractice. 6 A.L.R.4th 774.

Right of indigent defendant in state criminal case to assistance of ballistics experts. 71 A.L.R.4th 638.

Right of indigent defendant in state criminal case to assistance of fingerprint expert. 72 A.L.R.4th 87.

Right of indigent defendant in state criminal case to assistance of chemist, toxicologist, technician, narcotics expert, or similar nonmedical specialist in substance analysis. 74 A.L.R.4th 388.

Right of indigent defendant in state criminal case to assistance of investigators. 81 A.L.R.4th 259.

Alimony or child-support awards as subject to attorneys' fees. 49 A.L.R.5th 595.

Right of indigent defendant in state criminal prosecution to ex parte in camera hearing on request for state-funded expert witness. 83 A.L.R.5th 541.

Am. Jur.

8 Am. Jur. Pl & Pr Forms (Rev), Criminal Procedure, Form 41 (affidavit by indigent defendant for appointment of attorney).

§ 25-32-11. Duties; free access to accused.

The duties of the public defender shall include the investigation of charges against the defendant and all facts surrounding the same, and shall include courtroom and appellate appearances on behalf of the defendant in all cases originating in state and county courts. The public defender shall have free access to the accused who shall have process to compel the attendance of witnesses in his favor.

HISTORY:

Laws, 1979, ch. 509, § 6, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

Cross References —

Appointment of counsel for indigents, see § 99-15-15.

OPINIONS OF THE ATTORNEY GENERAL

When indigent defendant charged with felony appears for preliminary hearing before municipal judge, it is case 'originating in state and county courts' thereby requiring county public defender to appear and represent defendant. 1994 Miss. Op. Att'y Gen. 896.

Since county public defenders are required to represent indigent defendants charged with felonies at preliminary hearings in municipal court, city is under no obligation to compensate public defender; county that appointed public defender would be responsible for such compensation. 1994 Miss. Op. Att'y Gen. 896.

Section 25-32-11 provides that it is the duty of the county public defender to represent an indigent defendant at a preliminary hearing before a municipal judge. 1996 Miss. Op. Att'y Gen. 678.

When a county public defender is appointed to represent a defendant on felony charges in a municipal court preliminary hearing, the court should allow the public defender to withdraw if the felony charges are reduced to misdemeanors, the court should then determine if a court appointed attorney is appropriate on the misdemeanor charges, and if the public defender is appointed to represent the defendant on the misdemeanor charges, then the public defender is entitled to additional compensation from the municipality under Miss. Code Section 99-15-17. 1997 Miss. Op. Att'y Gen. 500.

RESEARCH REFERENCES

ALR.

Right of indigent defendant in criminal case to aid of state as regards new trial or appeal. 55 A.L.R.2d 1072.

Scope and extent, and remedy or sanctions for infringement, of accused's right to communicate with his attorney. 5 A.L.R.3d 1360.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Am. Jur.

5 Am. Jur. Proof of Facts 2d, Ineffective Assistance of Counsel, §§ 14 et seq. (proof that criminal defendant received ineffective assistance of counsel before and during trial).

§ 25-32-13. Appointment of counsel by court in conflict of interest cases; appointment of additional counsel where necessary.

(1) If the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

(2) If the court finds that an indigent is a defendant in a case of such a nature that he cannot be properly represented by the public defender alone, the court shall appoint additional counsel to assist the public defender as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

HISTORY:

Laws, 1979, ch. 509, § 7, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

RESEARCH REFERENCES

ALR.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Right of court-appointed attorney to contract with his indigent client for fee. 43 A.L.R.3d 1426.

Indigent accused's right to choose particular counsel appointed to assist him. 66 A.L.R.3d 996.

Practice References.

Young, Trial Handbook for Mississippi Lawyers § 1:2.

§ 25-32-15. Termination of office.

The office of public defender may be terminated, in the discretion of the board of supervisors, by entering an order upon the minutes of the board of supervisors six (6) months prior to the expiration of the term of the public defender. Such termination shall be effective at the end of the term of the public defender.

HISTORY:

Laws, 1979, ch. 509, § 8, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

§ 25-32-17. Compensation, staff, office space, and secretarial assistance not to be reduced; authority to increase.

The compensation, administrative staff, office space and secretarial assistance shall not be reduced or diminished but may be increased during the term of the public defender.

HISTORY:

Laws, 1979, ch. 509, § 9, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

§ 25-32-19. Obtaining financial, professional, investigatory, research, or other assistance.

The public defender and the board of supervisors may cooperate with any individual or public agency, whether state or federal, or with any institution of higher learning of the State of Mississippi, to obtain by gift, grant or otherwise any financial, professional, investigatory or research or other assistance; provided, however, that any grants or any financial assistance whatever for the purpose herein set out shall be paid over to the board of supervisors and administered by it for the purposes herein set forth. The board shall have the authority to use any financial assistance or grants to extend and expand the facilities of the office.

HISTORY:

Laws, 1979, ch. 509, § 10, eff from and after October 1, 1979.

Editor's Notes —

This section was repealed by former § 25-32-21 (Section 19, Chapter 575, Laws of 1998), effective July 1, 1999. Section 21 of Chapter 575, Laws of 1998 provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Laws, 1998, ch. 575] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect. At the direction of the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the text of § 25-32-21 has been omitted from the Code, and the text of this section, which had been deleted from the Code, has been added back and is reprinted above.

RESEARCH REFERENCES

ALR.

Construction and effect of statutes providing for office of public defender. 36 A.L.R.3d 1403.

Practice References.

Young, Trial Handbook for Mississippi Lawyers § 1:2.

§ 25-32-21. Repealed.

Repealed by Laws of 2014, ch. 414, § 2, effective upon passage (approved March 21, 2014).

§ 25-32-21. [Laws, 1998, ch. 575, § 19, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified.]

Editor's Notes —

Former § 25-32-21, as enacted by Section 19 of Chapter 575, Laws of 1998, provided for the repeal of §§ 25-32-1 through 25-32-19, effective July 1, 1999. Section 21 of that act provided, in part:

"(1) All new programs authorized under this Senate Bill No. 2239 [Chapter 575, Laws of 1998] shall be subject to the availability of funds specifically appropriated therefor by the Legislature during the 1998 Regular Session or any subsequent session. This act shall be codified but no amendment to a code section or repeal of a code section enacted by this Senate Bill No. 2239 shall take effect until the Legislature has funded any new programs authorized hereunder by line item appropriation, said line item appropriation to be certified by the Legislative Budget Office to the Secretary of State."

The Legislature did not fund the new programs authorized by Chapter 575, Laws of 1998, so the contingency provided for in Section 21 of that act was not met, and the repealer in § 25-32-21 did not take effect.

For that reason the Co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation omitted the text of § 25-32-21 from the Code.

The section was subsequently repealed by Section 2 of Chapter 414, Laws of 2014, effective upon passage (approved March 21, 2014).

STATEWIDE PUBLIC DEFENDER SYSTEM ACT [REPEALED]

Sec.
25-32-31 through 25-32-65. Repealed.

§§ 25-32-31 through 25-32-65. Repealed.

Repealed by Laws, 2000, ch. 569, § 29, eff from and after July 1, 2000.

§ 25-32-31. [Laws, 1998, ch. 575, § 1, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-33. [Laws, 1998, ch. 575, § 2, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-35. [Laws, 1998, ch. 575, § 3, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-37. [Laws, 1998, ch. 575, § 4, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-39. [Laws, 1998, ch. 575, § 5, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-41. [Laws, 1998, ch. 575, § 6, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-43. [Laws, 1998, ch. 575, § 7, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-45. [Laws, 1998, ch. 575, § 8, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-47. [Laws, 1998, ch. 575, § 9, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-49. [Laws, 1998, ch. 575, § 10, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-51. [Laws, 1998, ch. 575, § 11, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-53. [Laws, 1998, ch. 575, § 12, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-55. [Laws, 1998, ch. 575, § 13, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-57. [Laws, 1998, ch. 575, § 14, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-59. [Laws, 1998, ch. 575, § 15, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-61. [Laws, 1998, ch. 575, § 16, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-63. [Laws, 1998, ch. 575, § 17, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

§ 25-32-65. [Laws, 1998, ch. 575, § 18, eff from and after July 1, 1998, provided the new programs authorized by Laws, 1998, ch. 575, are funded and certified]

Editor's Notes —

Former § 25-32-31 was entitled "Title."

Former § 25-32-33 was entitled "Recognition of interests; declaration of purpose."

Former § 25-32-35 was entitled "Construction."

Former § 25-32-37 was entitled "Creation of Public Defender Commission."

Former § 25-32-39 was entitled "The powers and duties of the commission; administration and other related duties."

Former § 25-32-41 was entitled "Powers and duties of the commission in representation of indigent persons."

Former § 25-32-43 was entitled "Creation of offices of district public defenders."

Former § 25-32-45 was entitled "Powers and duties of district defender."

Former § 25-32-47 was entitled "Conflicts of interest."

Former § 25-32-49 was entitled "Prohibited acts and practices."

Former § 25-32-51 was entitled "Conflicts division created."

Former § 25-32-53 was entitled "Appellate division created."

Former § 25-32-55 was entitled "Coordination authorized between conflicts and appellate divisions."

Former § 25-32-57 was entitled "Initial appearance."

Former § 25-32-59 was entitled "Determination of indigence."

Former § 25-32-61 was entitled "Appointment of counsel for indigent person."

Former § 25-32-63 was entitled "Salaries and expenses."

Former § 25-32-65 was entitled "Funding; powers and duties subject to availability of funding and other resources."

MISSISSIPPI PUBLIC DEFENDER TASK FORCE [REPEALED]

Sec.
25-32-71. Repealed.

§ 25-32-71. Repealed.

Repealed by its own terms, eff from and after July 1, 2018.

§ 25-32-71. [Laws, 2015, ch. 424, § 2, eff from and after passage (approved March 29, 2015).]

Editor's Notes —

Former § 25-32-71 created the Mississippi Public Defender Task Force to study the needs by circuit court districts for state supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts.

A former § 25-32-71 [Laws, 2000, ch. 569, § 30; Laws, 2001, ch. 373, § 1; Laws, 2003, ch. 321, § 1; Laws, 2007, ch. 547, § 1; Laws, 2007, ch. 559, § 1; Laws, 2011, ch. 312, § 1, eff from and after passage (approved February 24, 2011. Repealed by its own terms, effective July 1, 2014.] was identical to § 25-32-71 as enacted by Laws, 2015, ch. 424, § 2, with the exception of the repeal date.

CHAPTER 33.

NOTARIES PUBLIC

Sec.	
25-33-1.	Appointment, bond and oath; issuance of new certificate; qualifications.
25-33-3.	To procure seals; delivery of copy of seal provisions.
25-33-5.	Register of official acts.
25-33-7.	Disposal of register and papers.
25-33-9.	Administering oaths and affirmations; affidavit of notary public.
25-33-11.	Powers and duties.
25-33-13.	Affixation of expiration date of commission.
25-33-15.	Record of protest of bill or note.
25-33-17.	Ex officio notaries public.
25-33-19.	Common seal of such officers.
25-33-21.	Acknowledgment by notary public as stockholder.
25-33-23.	Notarial acts of commissioned officers of United States armed forces.
25-33-25.	Notice that a notary public is not an attorney.
25-33-27.	Prohibited representations or advertising.
25-33-29.	Exceptions.
25-33-31.	Compliance.
25-33-33.	Forms and fees not otherwise provided by law; regulations providing for suspension or revocation of notary commission for misfeasance or malfeasance in office.

§ 25-33-1. Appointment, bond and oath; issuance of new certificate; qualifications.

The Governor may appoint notaries public who may serve in any or all counties of this state. A notary public shall hold office for a term of four (4) years. Notaries public who are appointed and commissioned after July 1, 1988, shall give bond, with sufficient sureties, licensed by the Department of Insurance, in the penalty sum of Five Thousand Dollars ($5,000.00). All such bonds shall be conditioned and approved by the Secretary of State. Notaries public shall not otherwise be considered as state officers. Each notary public shall take the oath of office prescribed by Section 268 of the Constitution. A notary public shall qualify by filing the oath and bond in the Office of the Secretary of State.

The bond requirements, unexpired appointments and commissions of notaries public issued prior to July 1, 1988, shall be sufficient, regardless of any jurisdictional limitations, to authorize notaries public appointed and commissioned prior to July 1, 1988, to serve any or all counties of this state. Any notary public commission containing language limiting the jurisdiction of a notary public may be returned to the Secretary of State. The Secretary of State shall then issue a new certificate indicating that such notary public may serve in any and all counties of this state.

The Secretary of State shall issue notary public commissions on behalf of the Governor to all qualified applicants. A notary public shall be at least eighteen (18) years of age, a citizen or legal resident of the United States, shall have resided in this state for a period of not less than thirty (30) days immediately preceding the date of the application, and shall meet such other requirements as the Secretary of State may establish by rule.

HISTORY:

Codes, 1880, § 426; 1892, § 3040; 1906, § 3447; Hemingway's 1917, § 2780; 1930, § 2858; 1942, § 4016; Laws, 1904, ch. 159; Laws, 1926, ch. 190; Laws, 1981, ch. 426, § 1; Laws, 1988, ch. 456, § 1; Laws, 2007, ch. 427, § 1, eff from and after July 1, 2007.

Cross References —

Exclusion of notaries from rule that no person holding an office other than in state government may also hold an office within the state government, see Miss. Const. Art. 14, § 266.

Power of Secretary of State to perform duties of notary public, see § 7-3-9.

Fees for notaries public, see § 25-7-29.

Notarial acts of commissioned officers of United States armed forces, see § 25-33-23.

Power of commissioner and assistant commissioners of state veterans affairs to perform duties of notary public, see § 35-1-15.

JUDICIAL DECISIONS

1. In general.

State statute requiring notaries public to be United States citizens violates equal protection clause of Fourteenth Amendment. Bernal v. Fainter, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175, 1984 U.S. LEXIS 93 (U.S. 1984).

OPINIONS OF THE ATTORNEY GENERAL

The wording of § 37-39-21 requires a purchase agent to be covered by an individual bond for $50,000. Under § 25-33-1 a Notary Public is a separate office covered by an entirely different statutory scheme and such Notary would be required to provide an individual bond of $5,000 for the performance of this duty. Therefore a purchasing agent who also acts as a Notary Public would be required to provide two individual bonds the total amount of which would be $55,000. 1996 Miss. Op. Att'y Gen. 222.

RESEARCH REFERENCES

ALR.

Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public or his bond for wilful or deliberate misconduct in performance of duties. 44 A.L.R.3d 1243.

Am. Jur.

13C Am. Jur. Legal Forms 2d, Notaries Public, §§ 185:14 et seq. (application for appointment).

13C Am. Jur. Legal Forms 2d, Notaries Public, §§ 185:12 et seq. (Official oath and bond; filing of signature and seal).

§ 25-33-3. To procure seals; delivery of copy of seal provisions.

Every notary public appointed and commissioned shall, at his own expense, procure a suitable notarial seal. Each seal shall have the name of the county of the notary's residence with that of the state and his own name on the margin thereof, and the words "notary public" across the center; and his official acts shall be attested by his seal of office.

The failure of such seal to conform to the provisions of this section shall not invalidate any official act or certificate of such notary public.

It shall be the duty of the Secretary of State to have printed a suitable number of copies of this section and to deliver to each notary public hereafter appointed a copy at the time of the issuance of his commission.

HISTORY:

Codes, 1892, § 3041; 1906, § 3448; Hemingway's 1917, § 2781; 1930, § 2859; 1942, § 4017; Laws, 1928, ch. 24; Laws, 1981, ch. 426, § 2; Laws, 1988, ch. 456, § 2, eff from and after July 1, 1988.

§ 25-33-5. Register of official acts.

Every notary public shall keep a fair register of all his official acts, and shall give a certified copy of his record, or any part thereof, to any person applying for it and paying the legal fees therefor.

HISTORY:

Codes, 1880, § 429; 1892, § 3042; 1906, § 3449; Hemingway's 1917, § 2782; 1930, § 2860; 1942, § 4018.

JUDICIAL DECISIONS

1. Failure to record in register.

In a dispute over the validity, extent, and priority of a bank's lien, Chapter 13 debtors failed to overcome the presumptive authenticity of a deed of trust that was properly acknowledged. The fact that a notary did not record her notarization in her register as required by Mississippi law did not render the acknowledgement void. Jefferson v. Cmty. Bank (In re Jefferson), — B.R. —, — B.R. —, 2015 Bankr. LEXIS 251 (Bankr. S.D. Miss. Jan. 26, 2015).

§ 25-33-7. Disposal of register and papers.

In the case of the death, resignation, disqualification or expiration of the term of office of any notary public, his registers and other public papers shall, within thirty (30) days, be lodged in the office of the clerk of the circuit court of the county of his residence; and the clerk of that county may maintain an action for them.

HISTORY:

Codes, 1880, § 430; 1892, § 3043; 1906, § 3450; Hemingway's 1917, § 2783; 1930, § 2861; 1942, § 4019; Laws, 1981, ch. 426, § 3; Laws, 1988, ch. 456, § 3, eff from and after July 1, 1988.

§ 25-33-9. Administering oaths and affirmations; affidavit of notary public.

Every notary public shall have the power of administering oaths and affirmations in all matters incident to his notarial office, and he shall be further qualified and empowered to administer oaths and affirmations for the purpose of taking oral testimony under oath or affirmation within the state at large. If an attestation of a notary public is questioned as to its authenticity or correctness of language, the notary public may file an affidavit regarding the truth of the attestation in question along with any corrected language and may file such with the land records in the office of the Chancery Clerk where such land is located, properly indexed, if such authenticity or correctness of language affects real property. Such affidavit shall be a rebuttable presumption that the attestation is true and correct.

HISTORY:

Codes, 1880, § 427; 1892, § 3044; 1906, § 3451; Hemingway's 1917, § 2784; 1930, § 2862; 1942, § 4020; Laws, 1974, ch. 387; Laws, 2002, ch. 354, § 1, eff from and after July 1, 2002.

Cross References —

Who may administer oaths and certify affidavits, see § 11-1-1.

Who may administer oaths of office, see § 25-1-9.

RESEARCH REFERENCES

ALR.

Perjury conviction as affected by notary's nonobservance of formalities for administration of oath to affiant. 80 A.L.R.3d 278.

Am. Jur.

58 Am. Jur. 2d, Notaries Public § 17.

1A Am. Jur. Legal Forms 2d, Affidavits and Declarations §§ 13:37-13:42 (identification and oath).

CJS.

66 C.J.S., Notaries § 9.

§ 25-33-11. Powers and duties.

Every notary public shall have power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation, such as bills of sale, bottomries, mortgages, and hypothecations of ships, vessels or boats, charter parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries; and to perform all other duties required of notaries by commercial usage, and also to make declarations, including the filing of an affidavit as provided in Section 25-33-9, and certify the truth thereof, under his seal of office, concerning all matters done by him in virtue of his office.

HISTORY:

Codes, 1880, § 428; 1892, § 3045; 1906, § 3452; Hemingway's 1917, § 2785; 1930, § 2863; 1942, § 4021; Laws, 1981, ch. 426, § 4; Laws, 1988, ch. 456, § 4; Laws, 2002, ch. 354, § 2, eff from and after July 1, 2002.

Cross References —

Acknowledgment and proof of conveyances of land, see §§ 89-3-3, 89-3-9.

Forgery of a will, deed, certificate of acknowledgment, or proof of recordable instrument, see § 97-21-63.

JUDICIAL DECISIONS

1. In general.

A justice of the peace is liable on his official bond for damages from his false certificate of acknowledgment. Hodges v. Mills, 139 Miss. 347, 104 So. 165, 1925 Miss. LEXIS 155 (Miss. 1925).

RESEARCH REFERENCES

ALR.

Sufficiency of certificate of acknowledgment. 25 A.L.R.2d 1124.

Liability of notary public or his bond for negligence in performance of duties. 44 A.L.R.3d 555.

Liability of notary public or his bond for wilful or deliberate misconduct in performance of duties. 44 A.L.R.3d 1243.

Am. Jur.

58 Am. Jur. 2d, Notaries Public §§ 31- 33.

1 Am. Jur. Pl & Pr Forms (Rev), Affidavits, Forms 30-35 (introduction of affidavit made by notary public).

1 Am. Jur. Pl & Pr Forms (Rev), Affidavits, Forms 61-63 (signature and title of notary public on affidavit).

CJS.

66 C.J.S., Notaries § 9.

Law Reviews.

Marcase, The absence of a signature requirement in Mississippi notary law: fraud waiting to happen. 13 Miss. C. L. Rev. 371 (Spring, 1993).

§ 25-33-13. Affixation of expiration date of commission.

Every notary public, holding commission as such through appointment by the governor, shall be required to affix to any written or printed certificate of acknowledgment by him, in addition to his official seal and signature, a written or printed recital of the date at which his commission expires. The failure of such notary public to affix such recital of date at which his commission expires shall not invalidate the acknowledgment of such instrument or such certificate of acknowledgment, or otherwise affect the validity or recording of any instrument.

In case of the failure hereafter on the part of any notary public, so holding commission, to comply with the requirement of this section, his commission may be revoked by the governor.

HISTORY:
Codes, 1942, § 4021-01; Laws, 1944, ch. 325, §§ 1, 2, eff May 1, 1944.

§ 25-33-15. Record of protest of bill or note.

When any notary public, justice of the peace, or clerk shall protest any bill of exchange or promissory note, he shall make a full and true record in his register or book kept for that purpose of all his proceedings in relation thereto, and shall note thereon whether demand of the sum of money therein mentioned was made, of whom, when, and where; whether he presented such bill or note; whether notices were given, to whom, and in what manner; where the same was mailed, and when and to whom and where directed; and of every other fact touching the same.

HISTORY:
Codes, 1880, § 431; 1892, § 3046; 1906, § 3453; Hemingway's 1917, § 2786; 1930, § 2864; 1942, § 4022.

Editor's Notes —
Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 25-33-17. Ex officio notaries public.

All justice court judges and clerks, clerks of the circuit and chancery courts and assistant secretaries of state are notaries public by virtue of their office, and shall possess all the powers and discharge all the duties belonging to the office of notary public, and may authenticate all their acts, instruments and attestations by the common seal of office; and all acts done by them of a notarial character shall receive the same credit and legal effect as are attached to the acts of notaries public.

HISTORY:
Codes, 1880, § 425; 1892, § 3047; 1906, § 3454; Hemingway's 1917, § 2787; 1930, § 2865; 1942, § 4023; Laws, 1981, ch. 426, § 5; Laws, 1988, ch. 456, § 5, eff from and after July 1, 1988.

Cross References —
Acknowledgment and proof of conveyances of land, see §§ 89-3-3, 89-3-9.

JUDICIAL DECISIONS

1. In general.
A justice of the peace is liable on his official bond for damages from his false certificate of acknowledgment. Hodges v. Mills, 139 Miss. 347, 104 So. 165, 1925 Miss. LEXIS 155 (Miss. 1925).

OPINIONS OF THE ATTORNEY GENERAL

A justice court judge is an ex officio notary public, but may not receive additional fees for such services. 1998 Miss. Op. Att'y Gen. 460.

The notarial seal as described in § 25-33-19 is the seal which is to be used by justice court judges and clerks when notarizing a document, and it is not proper to place the name of a clerk on such a seal. 2002 Miss. Op. Att'y Gen. 138.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Affidavits, Forms 65-68 (signature and title of officer).

1A Am. Jur. Legal Forms 2d, Affidavits and Declarations §§ 13:91-13:103 (signature and title of officer).

§ 25-33-19. Common seal of such officers.

The board of supervisors of every county shall provide a notarial seal, with the inscription "notary public" around the margin and the image of an eagle in the center, which seal shall be kept in the office of the clerk of the circuit court; and all ex-officio notaries public may at all times have access to and use such seal for the authentication of any notarial act necessary to be so authenticated.

HISTORY:

Codes, 1880, § 432; 1892, § 3048; 1906, § 3455; Hemingway's 1917, § 2788; 1930, § 2866; 1942, § 4024; Laws, 1988, ch. 456, § 6, eff from and after July 1, 1988.

OPINIONS OF THE ATTORNEY GENERAL

The notarial seal as described in § 25-33-19 is the seal that is to be used by justice court judges and clerks when notarizing a document, and it is not proper to place the name of a clerk on such a seal. 2002 Miss. Op. Att'y Gen. 138.

§ 25-33-21. Acknowledgment by notary public as stockholder.

It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

HISTORY:

Codes, Hemingway's 1921 Supp. § 2788a; 1930, § 2867; 1942, § 4025; Laws, 1918, ch. 227.

Cross References —

Qualifications and oaths of bank directors, see § 81-5-45.

JUDICIAL DECISIONS

1. In general.

Stockholders and directors of a corporation are authorized to make affidavits acknowledging the execution of a deed. Mississippi State Highway Com. v. Smith, 197 So. 2d 212, 1967 Miss. LEXIS 1503 (Miss. 1967).

§ 25-33-23. Notarial acts of commissioned officers of United States armed forces.

In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either (a) is a member of the armed forces of the United States or the husband or wife of a member of the armed forces of the United States; or (b) is serving as a merchant seaman outside the limits of the United States included within the 48 states and the District of Columbia; or (c) is outside said limits by permission, assignment, or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgments of instruments, attestation of documents, administration of oaths and affirmations, executions of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid, and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section.

HISTORY:
Codes, 1942, § 4025-01; Laws, 1946, ch 308; Laws, 1954, ch 247.

Cross References —
Acknowledgments before commissioned officers of United States armed forces, see § 89-3-5.

RESEARCH REFERENCES

Am. Jur.
1 Am. Jur. Pl & Pr Forms (Rev), Affidavits, Form 70 (signature and title of officer of United States armed forces on affidavit).

1A Am. Jur. Legal Forms 2d, Affidavits and Declarations § 13:96 (officer of the United States armed forces).

§ 25-33-25. Notice that a notary public is not an attorney.

A notary public who is not an attorney licensed to practice law in this state and, who advertises in any language the person's services as a notary public by radio, television, signs, pamphlets, newspapers, telephone directory or other written or oral communication, or in any other advertisement, shall include with such advertisement the notice set forth in this section in English and/or in any other languages used in the advertisement. The notice shall be of conspicuous size and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF MISSISSIPPI, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

An advertisement on radio or television must include substantially the same message.

HISTORY:
Laws, 2004, ch. 464, § 1, eff from and after July 1, 2004.

§ 25-33-27. Prohibited representations or advertising.

A notary public who is not an attorney licensed to practice law is prohibited from representing or advertising that the notary public is an immigration consultant, immigration paralegal or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the board of immigration appeals pursuant to 8 CFR Section 292.2(a-e) or any subsequent federal law.

HISTORY:
Laws, 2004, ch. 464, § 2, eff from and after July 1, 2004.

§ 25-33-29. Exceptions.

The provisions of Sections 25-33-25 through 25-33-31 shall not apply to:

(a) Notary services offered by a state or national bank, trust company, savings and loan association, savings bank or by any affiliate or subsidiary of such state or national bank, trust company, savings and loan association or savings bank or any agent or employee thereof; or

(b) Any offering of notary services or listing of fees for notary services as a part of the closing of any loan transaction, extension of credit, security instrument or transfer of title.

HISTORY:
Laws, 2004, ch. 464, § 3, eff from and after July 1, 2004.

§ 25-33-31. Compliance.

(1) Failure to comply with the provisions of Sections 25-33-25 through 25-33-29 constitutes an unfair or deceptive act as provided in Section 75-24-5.

(2) Any person who knowingly and willfully violates any provision of Sections 25-33-25 through 25-33-29 shall be guilty of a misdemeanor, and upon conviction shall be fined in an amount not to exceed One Thousand Dollars ($1,000.00).

(3) Upon a second conviction of any person under Sections 25-33-25 through 25-33-29, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment in the county jail for a period not to exceed one (1) year or a fine not to exceed One Thousand Dollars ($1,000.00), or both.

(4) Upon a third or subsequent conviction of any person for a violation of Sections 25-33-25 through 25-33-29, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony, and upon conviction shall be punished by confinement in the custody of the Department of Corrections for a period not to exceed five (5) years, or fined in an amount not to exceed Five Thousand Dollars ($5,000.00), or both.

(5) Criminal convictions in other jurisdictions for violations of substantially similar provisions to those contained in Sections 25-33-25 through 25-33-29 shall be counted in computing whether a violation under Sections 25-33-25 through 25-33-29 is a first, second, third or subsequent offense.

HISTORY:
Laws, 2004, ch. 464, § 4, eff from and after July 1, 2004.

Cross References —
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 25-33-33. Forms and fees not otherwise provided by law; regulations providing for suspension or revocation of notary commission for misfeasance or malfeasance in office.

The Secretary of State may prescribe forms and establish fees for services not otherwise provided by law.

Pursuant to the Administrative Procedures Law, the Secretary of State shall issue rules to implement this chapter including regulations providing for the suspension or revocation of a notary commission for misfeasance or malfeasance in office.

HISTORY:
Laws, 2007, ch. 427, § 2, eff from and after July 1, 2007.

Cross References —
Administrative Procedures Law, see §§ 25-43-1.101 et seq.

CHAPTER 41.

OPEN MEETINGS

Sec.	
25-41-1.	Legislative declaration.
25-41-3.	Definitions.
25-41-5.	Official meetings of public bodies to be public and open; provisions for teleconference and video meetings.
25-41-7.	Executive sessions.
25-41-9.	Regulatory authority for governing; conduct of persons attending meetings.
25-41-11.	Minutes.
25-41-13.	Notice of meetings.
25-41-15.	Enforcement.
25-41-17.	Chance meetings and social gatherings excluded.

§ 25-41-1. Legislative declaration.

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

HISTORY:

Laws, 1975, ch. 481, § 1, eff from and after January 1, 1976.

Cross References —

Application of this chapter to meetings of the state Advisory Council in Occupational Therapy, see § 73-24-11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Violation of Act.

1. In general.

Members of the school board who were present at a church meeting repeatedly informed the others present that the meeting was not a board meeting and they would not discuss board business; it was clear that the members of the board were not at the church to discuss matters of the school board. Howze-Campbell v. Mound Bayou Sch. Dist., 914 So. 2d 1284, 2005 Miss. App. LEXIS 905 (Miss. Ct. App. 2005).

Trial court erred in ruling that an event attended by city employees and officials was not a "meeting" but a purely social gathering not governed by Miss. Code Ann. § 25-41-1 because (1) city council members were given advance notice of the event; (2) the facilitator had an agenda for the event, which was held to improve the participants' ability to work together; (3) some council members thought the city would fund the gathering, and one councilman apparently paid the entire bill only because of a newspaper's pending lawsuit; and (4) no spouses, family members, or friends of the participants were present or invited. Gannett River States Publ'g Corp. v. City of Jackson, 866 So. 2d 462, 2004 Miss. LEXIS 216 (Miss. 2004).

Any rules or regulations of administrative boards should provide no less access of the public to their proceedings and records than is afforded under the Open Meetings Act, §§ 25-41-1 et seq. and the Public Records Act, §§ 25-61-1 et seq. State Oil & Gas Bd. v. McGowan, 542 So. 2d 244, 1989 Miss. LEXIS 184 (Miss. 1989).

Board of trustees of state institution of higher learning is not exempt from Open Meeting Act (§§ 25-41-1 et seq.) under either Mississippi Constitution (§ 213-A) or its companion statute (§§ 37-101-1 et seq). Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

2. Violation of Act.

Chancery court properly affirmed the Ethics Commission's finding that a mayor and city council violated the Open Meetings Act by holding prearranged, nonsocial, and sub-quorum gatherings in the mayor's conference room on the topics of economic development and maintenance of a public building that were not open to the public, after which city officials issued a press release announcing how a project would be managed, and that the meetings were specifically held to avoid the consequences of the Act where § 25-41-1 was clear and unambiguous, asserted the philosophy and spirit of the Act, addressed when a gathering must be open to the public by focusing on the subject matter of the gathering and the circumstances surrounding the gathering. Mayor & City Council & Columbus v. Commercial Dispatch, 234 So. 3d 1236, 2017 Miss. LEXIS 368 (Miss. 2017).

OPINIONS OF THE ATTORNEY GENERAL

A municipality that is participating in a self insured pool is a public body carrying out a governmental function and is subject to the Public Meetings Act in the conduct of such activities. 1991 Miss. Op. Att'y Gen. 855.

Nothing in Open Meetings Act requires Water and Sewer District to provide their consumer lists to third party requesting such list. 1993 Miss. Op. Att'y Gen. 833.

Although there is no statutory requirement that county sheriff remain or be excused during closed executive session, it is within discretion of Board of Supervisors to determine whether sheriff should be present during any executive session. 1994 Miss. Op. Att'y Gen. 992.

County Council of Governments was merely voluntary association of local governments and did not appear to have any corporate existence; thus, it did not appear to fall within purview of Open Meetings Act. 1994 Miss. Op. Att'y Gen. 49.

Attendance by members of local governing boards meetings held by voluntary association of local governments may fall under purview of Open Meetings Act. 1994 Miss. Op. Att'y Gen. 49.

Legislative policy behind Open Meetings Act is that public business be performed in open and public manner and that citizens be advised of deliberations and decisions that go into the making of public policy. 1994 Miss. Op. Att'y Gen. 49.

A Board of Supervisors may not hold or transact official acts outside the County in which they were elected. See Section 19-3-11 and Sections 25-41-1 et seq. 1995 Miss. Op. Att'y Gen. 119.

Under Sections 25-41-1 and 25-41-3(b), a luncheon will not violate open meetings laws so long as the Board does not discuss matters pertaining to possible future public policy. 1996 Miss. Op. Att'y Gen. 425.

A city council member may discuss a proposed annexation in an open meeting when the council has not voted to declare an executive session; however, the legislature has provided for executive sessions for discussions with respect to prospective litigation for the protection of the public interest. 1999 Miss. Op. Att'y Gen. 783.

A school district may not develop a policy that bans recording devices or tape recorders from school board meetings, as such policy would be in violation of the state open meetings laws. However, the board may promulgate reasonable rules and policies concerning the recording of meetings. 2005 Miss. Op. Att'y Gen. 371.

A school board may employ legal counsel other than the Board Attorney only by a majority vote of a quorum present in a properly noticed and open meeting of the board, and must officially hire an attorney before sharing any confidential personnel records. Reasons for non-renewal of a superintendent's contract and any settlement offers must be approved and recorded in the minutes at an official meeting of the board. All policies, actions, and decisions of the school board must be reasonable and necessary to meet the educational needs of the district's children. 2007 Miss. Op. Att'y Gen. 119, 2007 Miss. AG LEXIS 71.

RESEARCH REFERENCES

ALR.

Pending or prospective litigation exception under state law making proceedings by public bodies open to the public. 35 A.L.R.5th 113.

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A Cloud Over the Sunshine Law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-3. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein, to wit:

(a) "Public body" means any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether the entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and any standing, interim or special committee of the Mississippi Legislature. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board and the board of trustees of a community hospital as defined in Section 41-13-10. There shall be exempted from the provisions of this chapter:

(i) The judiciary, including all jury deliberations;

(ii) Law enforcement officials;

(iii) The military;

(iv) The State Probation and Parole Board;

(v) The Workers' Compensation Commission;

(vi) Legislative subcommittees and legislative conference committees;

(vii) The arbitration council established in Section 69-3-19;

(viii) License revocation, suspension and disciplinary proceedings held by the Mississippi State Board of Dental Examiners; and

(ix) Hearings and meetings of the Board of Tax Appeals and of the hearing officers and the board of review of the Department of Revenue as provided in Section 27-77-15.

(b) "Meeting" means an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power, including an assemblage through the use of video or teleconference devices that conforms to Section 25-41-5.

HISTORY:

Laws, 1975, ch. 481, § 2; Laws, 1991, ch. 483, § 34; Laws, 2000, ch. 623, § 9; Laws, 2003, ch. 496, § 1; Laws, 2005, ch. 499, § 11; Laws, 2009, ch. 492, § 8; Laws, 2013, ch. 497, § 33; Laws, 2015, ch. 484, § 1; Laws, 2016, ch. 434, § 1, eff from and after Jan. 1, 2016.

Editor's Notes —

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2016, ch. 434, § 2, provides:

"SECTION 2. This act shall take effect and be in force from and after January 1, 2016. It is the intent of the Legislature that this act apply retroactively."

Cross References —

Mississippi Charter School Authorizer Board, generally, see § 37-179-1 et seq.

Mississippi State Board of Dental Examiners, see § 73-9-1, et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. "Public body."

1. In general.

Factors to be considered in determining whether an activity is business or social within the context of the open meetings requirement include the activity that takes place at the function, the advance call or notice given to the members of the public body, an agenda, the claim for per diem and travel expenses by the members, and other pertinent factors. Gannett River States Publ'g Corp. v. City of Jackson, 866 So. 2d 462, 2004 Miss. LEXIS 216 (Miss. 2004).

Trial court erred in ruling that an event attended by city employees and officials was not a "meeting" but a purely social gathering not governed by Miss. Code Ann. § 25-41-1 because (1) city council members were given advance notice of the event; (2) the facilitator had an agenda for the event, which was held to improve the participants' ability to work together; (3) some council members thought the city would fund the gathering, and one councilman apparently paid the entire bill only because of a newspaper's pending lawsuit; and (4) no spouses, family members, or friends of the participants were present or invited. Gannett River States Publ'g Corp. v. City of Jackson, 866 So. 2d 462, 2004 Miss. LEXIS 216 (Miss. 2004).

The attendance by members of a County Board of Supervisors individually or in a body at social functions or at charities, or with industry or business representatives when their only purpose and function is to listen, and to take no official action at the time, are not public meetings within the Open Meetings Act. Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Meetings held by a County Board of Supervisors with city officials and several other people to discuss developing a sewage system in the southern part of the county to induce homeowners to build in that area, were official meetings under the Open Meetings Act. Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Meeting is within Open Meeting Act when there is assemblage of members of public body at which official acts, including actions relating to formation and determination of public policy, may be taken; although purely social functions are not covered, factors to consider in making determination of whether activity is business or social include activity that takes place at function, advance call or notice given members, agenda, claim for per diem and travel expenses by members, and other pertinent factors. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

State board of trustees of state institutions of higher learning is "public body" within meaning of § 25-41-3(a) of Open Meetings Act; executive session meetings between state board and its university presidents and staff are "meetings" under § 25-41-3(b), and are thus subject to Open Meetings Act. Mississippi Publishers Corp. v. Board of Trustees, 9 Media L. Rpt. 2450 (Miss. Ch. 1983).

2. "Public body."

Citizen did not show a planning and development district (district) was a public agency because (1) the district's incorporation with the Secretary of State's office created the district, not the Mississippi Constitution, a statute, or an executive order, and (2) a later executive order did not convert the district into such an agency. Kinney v. S. Miss. Planning & Dev. Dist., 202 So. 3d 187, 2016 Miss. LEXIS 349 (Miss. 2016).

OPINIONS OF THE ATTORNEY GENERAL

Meeting of Metro Narcotics Task Force is exempted from Open Meetings Act. 1991 Miss. Op. Att'y Gen. 293.

County Council of Governments was merely voluntary association of local governments and did not appear to have any corporate existence; thus, it did not appear to fall within purview of Open Meetings Act. 1994 Miss. Op. Att'y Gen. 49.

If non-profit corporation that administers baseball leagues is not entity created by statute or order of State or city, then non-profit corporation is not subject to Public Meetings Law notwithstanding it is in part funded by public money. 1994 Miss. Op. Att'y Gen. 113.

Under Sections 25-41-1 and 25-41-3(b), a luncheon will not violate open meetings laws so long as the Board does not discuss matters pertaining to possible future public policy. 1996 Miss. Op. Att'y Gen. 425.

A voluntary association of local governments and governmental officials is not a public body for purposes of the open meetings requirement and, although meetings of the Council of Governments would not be subject to the requirement, attendance by members of the local governing boards at Council of Governments meetings might well fall under the open meetings purview. 1998 Miss. Op. Att'y Gen. 835.

Neither a private nonprofit corporation nor a limited liability corporation meets the definition for a "public body". 2000 Miss. Op. Att'y Gen. 674.

Official meetings of public bodies of the Division of Medicaid are subject to the Open Meetings Act. 2002 Miss. Op. Att'y Gen. 355.

Meetings of Medicaid's Drug Use Review Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. 2002 Miss. Op. Att'y Gen. 355.

Meetings of Medicaid's Pharmacy and Therapeutics Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. 2002 Miss. Op. Att'y Gen. 355.

The attendance of more than one supervisor at a meeting organized and called by a state or federal economic development agencies whose sole purpose is to disseminate information of available grants and favorable loans for public projects, is not in violation of the Open Meetings Act; however, this only remains true if the members of Board of Supervisors refrain from discussing official business and no official actions are taken. 2003 Miss. Op. Att'y Gen. 139.

RESEARCH REFERENCES

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A Cloud Over the Sunshine Law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-5. Official meetings of public bodies to be public and open; provisions for teleconference and video meetings.

(1) All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in Section 25-41-7.

(2) A public body may conduct any meeting through teleconference or video means. A quorum of a public body as prescribed by law may be at different locations for the purpose of conducting a meeting through teleconference or video means provided that the equipment used is located at the place where the public body normally meets or at a public location specified in any notice of a special meeting, and provided that the equipment allows all

members of the public body and members of the public who attend the meeting to hear the deliberations of the public body.

(3) An agenda and materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to the members of the public body shall be made available to the public at the time of the meeting. Votes taken during any meeting conducted through teleconference or video means shall be taken in a manner that is clearly audible or visible to all members of the public body and to members of the public present at the public location.

HISTORY:

Laws, 1975, ch. 481, § 3; Laws, 2003, ch. 496, § 2; Laws, 2006, ch. 596, § 2; Laws, 2007, ch. 591, § 1; Laws, 2009, ch. 405, § 1; Laws, 2012, ch. 442, § 1; Laws, 2017, ch. 319, § 1, eff from and after July 1, 2017.

Editor's Notes —

Laws of 2012, ch. 442, §§ 7 and 8 provide:

"SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Amendment Notes —

The 2006 amendment added the last sentence in (2).

The 2017 amendment, in (2), rewrote former (a), which read: "A public body may conduct any meeting through teleconference or video means. A quorum of a public body as prescribed by law may be at different locations for the purpose of conducting a meeting through teleconference or video means provided participation is available to the general public at one or more public locations specified in the public meeting notice," and deleted the paragraph (a) designation, and deleted (b), which related to the establishment of a quorum by a municipal public body; deleted former (3), which related to notice of meetings held pursuant to subsection (2) of the section, and redesignated former (4) as (3); in (3), substituted "the members of the public body" for "all locations where public access will be provided" in the first sentence, deleted the former second sentence, which read: "Minutes of all meetings held by teleconference or video means shall be recorded as required by Section 25-41-11," and substituted "taken in a manner that is clearly audible or visible to all members of the public body and to members of the public present at the public location" for "recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a teleconference medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three (3) years following the date of the meeting and shall be available to the public" in the last sentence; and deleted (5), which related to emergency meetings.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice of teleconference.

1. In general.

There is no prohibition of a mayor presiding over a meeting via teleconference under Miss. Code Ann. § 25-41-5. Ball v. Mayor & Bd. of Aldermen, 983 So. 2d 295, 2008 Miss. LEXIS 184 (Miss. 2008).

Requirement that official meetings be open to public at all times may not be avoided by use of telephone polls among members of public body to conduct official acts; however, recording of final vote by telephone is not prohibited where vote is reduced to public record and all deliberation prior to final vote has taken place in accordance with Open Meetings Act. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

Academic program review, evaluation of curriculum offerings in state universities, conducted by Board of Trustees of State Institutions of Higher Learning must be open and public. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

2. Notice of teleconference.

Even though there was nothing to show that notice was given of a teleconference of a scheduled meeting, no prejudice was established because several citizens had an opportunity to participate in the process. They attended the meeting in question, objected to a city's actions at the meeting, filed a notice of appeal and a bill of exceptions concerning the actions of the city at the meeting, argued their case before the circuit court, and appealed the circuit court's decision to the Mississippi Supreme Court. Ball v. Mayor & Bd. of Aldermen, 983 So. 2d 295, 2008 Miss. LEXIS 184 (Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Several aldermen may attend social or civic gatherings without being in contravention of the Open Meetings Act if no official business is discussed and no official actions are taken. 2002 Miss. Op. Att'y Gen. 249.

The attendance of more than one supervisor at a meeting organized and called by a state or federal economic development agencies whose sole purpose is to disseminate information of available grants and favorable loans for public projects, is not in violation of the Open Meetings Act; however, this only remains true if the members of Board of Supervisors refrain from discussing official business and no official actions are taken. 2003 Miss. Op. Att'y Gen. 139.

More specific procedures for conducting meetings via electronic means are within the discretion of the governing body to establish, provided those procedures are not inconsistent with the statute. 2003 Miss. Op. Att'y Gen. 702.

While a board may promulgate reasonable rules concerning taping of public meetings, the flat prohibition of taping meetings is unreasonable. Unless the board finds, consistent with fact, that the presence and use of a camera, or several cameras, would be disruptive, then the board cannot prohibit cameras. 2004 Miss. Op. Att'y Gen. 253.

In a code charter municipality with a five member board of aldermen, if three members fail to appear for any meeting, a quorum does not exist and no official business can legally be conducted. 2004 Miss. Op. Att'y Gen. 421.

A school board may but has no legal obligation to publicly report its action immediately upon exiting executive session. In any case, such action must be reflected in its minutes which must be timely recorded. 2004 Miss. Op. Att'y Gen. 315.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes making public proceedings open to the public. 38 A.L.R.3d 1070.

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 144.

Law Reviews.

1985 Mississippi Supreme Court Review – Administrative Law. 55 Miss. L. J. 735, December 1985.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A Cloud Over the Sunshine Law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-7. Executive sessions.

(1) Any public body may enter into executive session for the transaction of public business; however, all meetings of any public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to

declare an executive session. The motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subsection (1) hereof, has been taken on the issue.

(3) An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting. Nothing in this section shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.

(4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:

(a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position, or matters relating to the terms of any potential or current employment or services agreement with any physicians or other employees of public hospitals, including any discussion of any person applying for medical staff privileges or membership with a public hospital.

(b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

(c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.

(d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.

(e) Any body of the Legislature which is meeting on matters within the jurisdiction of that body.

(f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons or property, or both, within the jurisdiction of the public body.

(g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.

(h) Discussions between a school board and individual students who attend a school within the jurisdiction of the school board or the parents or teachers of the students regarding problems of the students or their parents or teachers.

(i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.

(j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business, medical service or an industry.

(k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes transaction of business and discussion in executive session by the board of trustees of a public hospital regarding any employee or medical staff member or applicant for medical staff privileges and any such individual's credentialing, health, performance, salary, raises or disciplinary action. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.

(*l*) Discussions regarding material or data exempt from the Mississippi Public Records Act of 1983 pursuant to Section 25-11-121.

(m) Transaction of business and discussion regarding prospective strategic business decisions of public hospitals, including without limitation, decisions to open a new service line, implement capital improvements, or file applications for certificates of need or determinations of nonreviewability with the State Department of Health.

(n) Transaction of business of the boards of trustees of public hospitals that would require discussion of any identifiable patient information, including without limitation, patient complaints, patients' accounts, patients receiving charity care, or treatment that could be identified to a patient.

(5) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of the public body.

(6) Any vote whereby an executive session is declared shall be applicable only to that particular meeting on that particular day.

HISTORY:

Laws, 1975, ch. 481, § 4; Laws, 1981, ch. 456, § 1; Laws, 1990, ch. 541, § 1; Laws, 2007, ch. 305, § 2; Laws, 2015, ch. 484, § 2, eff from and after Jan. 1, 2016.

Cross References —

Application of this section to the Mississippi Gaming Commission, see § 75-76-13.

Mississippi Public Records Act of 1983 generally, see §§ 25-61-1 et seq.

JUDICIAL DECISIONS

1. In general.

As a gathering of city employees and officials, conducted by a communications consultant and designed to improve the participants' ability to work together, was a "public meeting," not a purely social gathering, the city council should have held the meeting in public; if the public needed to be excluded for a legislatively approved reason, the council could have then voted to go into executive session after stating a specific reason. Gannett River States Publ'g Corp. v. City of Jackson, 866 So. 2d 462, 2004 Miss. LEXIS 216 (Miss. 2004).

The attendance by members of a County Board of Supervisors individually or in a body at social functions or at charities, or with industry or business representatives when their only purpose and function is to listen, and to take no official action at the time, are not public meetings within the Open Meetings Act. Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Within the framework of the statutory language of the Open Meetings Act itself, all statutory exceptions must, under the spirit and philosophy of the Act, be strictly construed against executive sessions. Even though an executive session might come under "personnel matters," or another of the subjects listed under § 25-41-7(4), this in and of itself is insufficient in the absence of at least a reasonably arguable basis of an actual, present need for a closed meeting on the subject. Hinds County Bd. of

Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Under § 25-41-7(4), "personnel matters" were restricted to matters dealing with employees hired and supervised by a County Board of Supervisors, not those employees of some other county officials, and not other county officials themselves. Nor, would a member of the Board of Supervisors be classified "personnel." Moreover, an independent contractor such as an accountant, lawyer, or architect is not an employee of the Board, and would not come under "personnel." Thus, the Board was not entitled to go into executive session under the "personnel matters" exception to consider appointments to fill a vacancy on the Board, to discuss employees of some other county official, or to consider the employment of, or discussions with, an architect concerning his employment. Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Under § 25-41-7, the reason given for going into executive session must be meaningful. The reason stated must be of sufficient specificity to inform those present that there is in reality a specific, discrete matter or area which the public body had determined should be discussed in executive session. The public body may then go into executive session to discuss this one matter, and, when concluded, must re-open the meeting. No matter may be discussed at the executive session other than the announced subject. Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Total vote on question of entering into executive session must be recorded, by individual member's expression, in minutes. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

As term "personnel" used in § 25-41-7 is not defined within Open Meetings Act, its use is of common and ordinary meaning and any further definition must be addressed by court on case-by-case development guided by general rules of statutory definition together with legislative intent of act and its declared policy. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

The meeting of a city planning commission, which was a "public body" within the meaning of § 25-41-3(a), with two professional city planners, each of whom had provided expert testimony in prior annexation trials, to consider possible expansion of the city through annexation of additional lands, came within the litigation exception to the statute, even though no attorneys were present, since annexation confirmation proceedings are "litigation" within the meaning of the section, since opposition to the proposed annexation was reasonably expected by the commission, since the minutes of the meeting clearly indicated it was a strategy session with respect to the prospective litigation, and since the annexation confirmation proceedings were "prospective litigation" within the meaning of the section, that is, litigation reasonably likely to occur in the reasonably foreseeable future; and thus, the planning commission had the lawful power to hold an executive session and exclude from it members of the press and public. Vicksburg v. Vicksburg Printing & Pub. Co., 434 So. 2d 1333, 1983 Miss. LEXIS 2726 (Miss. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Requiring release of transcripts or recordings of lawfully conducted executive sessions would entirely frustrate purposes for allowing such sessions to be held; Open Meetings Act and Public Records Act are construed to be in pari materia, and recordings or transcripts of lawfully called and conducted executive sessions are not subject to public disclosure; fact that meeting occurs in executive session does not alter either necessity for keeping accurate minutes, or right of public access to those minutes. 1990 Miss. Op. Att'y Gen. 205.

Board of trustees of community hospital may go into executive session without attorney present; however, board must have matter for discussion which is exempt from Open Meetings Act as set forth in Miss. Code Section 25-41-7; board must comply with procedures set forth in that section. 1993 Miss. Op. Att'y Gen. 274.

Civil Service Commission may enter into executive session to discuss actions to be taken concerning personnel matters pursuant to Section 25-41-7(4)(a) after Commission has heard witnesses in public hearing. 1994 Miss. Op. Att'y Gen. 121.

Under Section 25-41-7, who is allowed to remain during an executive session is entirely within the discretion of the public body conducting the meeting. 1995 Miss. Op. Att'y Gen. 163.

A board cannot achieve a quorum through participation over the telephone; a quorum must be physically present; however, as long as all deliberations and votes are conducted in a manner that provides access to the public and are properly recorded, and the meeting is properly noticed and at all times open to the public at the place normally set aside for board meetings, participation of a member in a regular meeting via telephone conference call satisfies the requirements of the Open Meetings Act. 1999 Miss. Op. Att'y Gen. 647.

If a public body determines, as reflected in the minutes, that the salary or compensation of a particular official or employee includes discussion of their job performance, character or professional competence, then the declaration of an executive session to discuss these issues would be proper; however, once decided upon, the amount of the salary would be public record. 2002 Miss. Op. Att'y Gen. 22.

A general across the board salary increase for all employees is public knowledge and not subject to discussion in an executive session. 2002 Miss. Op. Att'y Gen. 22.

Specified contract negotiations for sporting events, concerts, and theatrical auditions did not qualify for an exemption under the Open Meetings Act. 2002 Miss. Op. Att'y Gen. 342.

When patient confidentiality can be protected by blinding patient names using numerical or other anonymous identifiers, the Medicaid Division cannot circumvent the Open Meetings Act by entering into an executive session. 2002 Miss. Op. Att'y Gen. 355.

While there does not appear to be any need for executive sessions once a project became public knowledge, that determination is left to the discretion of the board of supervisors. 2004 Miss. Op. Att'y Gen. 189.

There is nothing that prohibits members of the board of aldermen from disclosing information discussed during the executive session. However, a violation of § 25-4-105(a) may result if a member of a municipal board uses information learned during an executive session for his or her personal pecuniary benefit. 2004 Miss. Op. Att'y Gen. 439.

There is no provision for removal of municipal officers for disclosing discussions which occur during executive session. 2004 Miss. Op. Att'y Gen. 439.

A school board may but has no legal obligation to publicly report its action immediately upon exiting executive session. In any case, such action must be reflected in its minutes which must be timely recorded. 2004 Miss. Op. Att'y Gen. 315.

Nothing in the open meetings law prohibits members of the board of aldermen from disclosing information discussed during executive sessions, nor does the law provide any penalties for those persons who disclose matters discussed in executive session. 2006 Miss. Op. Att'y Gen. 42.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes making public proceedings open to the public. 38 A.L.R.3d 1070.

Emergency exception under state law making proceedings by public bodies open to the public. 33 A.L.R.5th 731.

Attorney-client exception under state law making proceedings by public bodies open to the public. 34 A.L.R.5th 591.

Pending or prospective litigation exception under state law making proceedings by public bodies open to the public. 35 A.L.R.5th 113.

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 144.

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A cloud over the sunshine law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-9. Regulatory authority for governing; conduct of persons attending meetings.

Any public body may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.

HISTORY:

Laws, 1975, ch. 481, § 5, eff from and after January 1, 1976.

OPINIONS OF THE ATTORNEY GENERAL

Private citizen may tape record all discussions taking place at open meeting of any public body, subject to such reasonable rules and regulations which that public body may enact; it would not be "reasonable" for any public body to flatly prohibit such practice. 1990 Miss. Op. Att'y Gen. 317.

Whether television and radio coverage disrupt meeting are questions of fact to be determined by public officials charged with responsibility to enforce reasonable rules and regulations for conduct of persons attending open meetings. 1990 Miss. Op. Att'y Gen. 605.

Private citizen may tape record all discussions taking place at open meeting of any public body, subject to such reasonable rules and regulations which public body may enact pursuant to Miss. Code Section 25-41-9; it would not be reasonable for any public body to flatly prohibit such practice. 1993 Miss. Op. Att'y Gen. 340.

Under the Mississippi Open Meetings Act, Miss. Code Ann. § 25-41-1 et seq., a municipality's Board of Aldermen may develop rules concerning the video or audio recording of its meetings to allow for minimal disruption thereof, but may not limit or restrict such recordings based upon the person's purpose in making the recording. 2007 Miss. Op. Att'y Gen. 21, 2007 Miss. AG LEXIS 17.

RESEARCH REFERENCES

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A cloud over the sunshine law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-11. Minutes.

(1) Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours.

(2) Minutes of a meeting conducted by teleconference or video means shall comply with the requirements of Section 25-41-5.

(3) Minutes of legislative committee meetings shall consist of a written record of attendance and final actions taken at such meetings.

HISTORY:

Laws, 1975, ch. 481, § 6; Laws, 1981, ch. 456, § 2; Laws, 2003, ch. 496, § 3, eff from and after July 1, 2003.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. No violation found.

1. In general.

Although there was not strict adherence to the Open Meetings Act by the zoning commission, there was substantial compliance with the Act, which was sufficient in the absence of prejudice resulting from the lack of compliance, where (1) the first meeting of the commission, held on April 14, 1994, and all subsequent meetings were not recorded within thirty days, but were recorded by the board of supervisors on June 24, 1994, and (2) the commission failed to spread upon its minutes the times and places and the procedures by which all of its meetings are to be held. Citizens for Equal Prop. Rights v. Board of Supervisors, 730 So. 2d 1141, 1999 Miss. LEXIS 17 (Miss. 1999).

Total vote on question of entering into executive session must be recorded, by individual member's expression, in minutes. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

2. No violation found.

Appellate court found no error in the chancellor's finding that the minutes of the executive session were sufficient under Miss. Code Ann. § 25-41-11(1) (Rev. 2006) because there was no evidence in the record that the board of supervisors violated the Act by not taking minutes in executive session as required by § 25-41-11(1). LaCroix v. Marshall County Bd. of Supervisors, 28 So. 3d 650, 2009 Miss. App. LEXIS 537 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 90 (Miss. 2010).

OPINIONS OF THE ATTORNEY GENERAL

When governing authorities decide in executive session to make offer in settlement of lawsuit or to authorize attorney to negotiate within certain range, governing authorities should state in minutes only that attorney is authorized to negotiate with individuals to settle lawsuit; when governing authorities finally approve an amount which has been accepted for settlement of lawsuit, then the governing authorities should state in minutes amount which they have approved for settlement of the lawsuit. 1992 Miss. Op. Att'y Gen. 767.

Meetings of Medicaid's Drug Use Review Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. 2002 Miss. Op. Att'y Gen. 355.

Meetings of Medicaid's Pharmacy and Therapeutics Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. 2002 Miss. Op. Att'y Gen. 355.

A city board member may be present during the hearing for disciplinary actions on their immediate relative. 2002 Miss. Op. Att'y Gen. 396.

The governing authority has the ultimate authority to determine what should be included and what should be omitted from the minutes, so long as the statutory requirements are met. 2003 Miss. Op. Att'y Gen. 59.

It is left to the discretion of the board of supervisors to determine whether an individual supervisor's comments on his or her vote, i.e., point of personal privilege, should be included in the minutes. 2004 Miss. Op. Att'y Gen. 189.

A school board may but has no legal obligation to publicly report its action immediately upon exiting executive session. In any case, such action must be reflected in its minutes which must be timely recorded. 2004 Miss. Op. Att'y Gen. 315.

It is left to the discretion of the governing board whether to include information in the minutes other than the recording of final actions. 2006 Miss. Op. Att'y Gen. 42.

The minutes of any executive session must be incorporated with, or otherwise attached, to the minutes of the meeting in which the executive session was held. 2006 Miss. Op. Att'y Gen. 42.

While it is the ultimate determination of a board to determine what should be included in the minutes of its meeting, the minutes should accurately reflect what transpired at the meeting. 2006 Miss. Op. Att'y Gen. 475.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. 2d, Administrative Law § 226.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 157.

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A cloud over the sunshine law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-13. Notice of meetings.

(1) Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meetings shall be required except that:

(a) A notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any called special meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets. A copy of the notice shall be made a part of the minutes or other permanent official records of the public body; and

(b) Except as otherwise provided by law, a notice of a called special meeting shall be posted to the public body's website, if the public body has a website and has the capability to update the website, not less than one (1) hour before the meeting. A copy of this notice shall be transmitted via email or facsimile not less than one (1) hour before the meeting to any citizen and any publication, broadcast and digital media with a general circulation or coverage within the public body's jurisdiction, that has submitted in writing its interest to receive these notices. Any public body may, at its discretion, purge any list of publications, broadcasts or digital media that have requested to receive the notices once every twenty-four (24) months. After the purge, any publication, broadcast or digital media may resubmit in writing its interest to receive the notices. Nothing in this paragraph (b) shall add additional notice requirements for meetings of public bodies held in cases of emergencies. The provision of this paragraph (b) requiring notice to be posted on the public body's website shall not apply to municipalities with a population as determined by the latest federal decennial census of less than twenty-five thousand (25,000) inhabitants, and any county with less than fifty thousand (50,000) according to the latest federal decennial census.

(2) Any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after January 1, 1976, spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

(3) Notice of any regular meeting held by a state agency, other than a legislative committee, shall be submitted to the Department of Finance and Administration at least twenty-four (24) hours before the meeting in order to be posted on the department's searchable website created by the Mississippi Accountability and Transparency Act, Section 27-104-152 et seq. For purposes of this subsection, the term "state agency" means an agency, department, institution, board, commission, council, office, bureau, division, committee or subcommittee of the state. However, the term "state agency" does not include institutions of higher learning, community and junior colleges, counties or municipalities.

(4) During a regular or special session of the Mississippi Legislature, notice of meetings of all committees, other than conference committees, shall

be given by announcement on the loudspeaker during sessions of the House of Representatives or Senate or by posting on a bulletin board provided for that purpose by each body.

(5) When not in session, the meeting times and places of all committees shall be kept by the Clerk of the House of Representatives as to House committees and by the Secretary of the Senate as to Senate committees, and shall be available at all times during regular working hours to the public and news media.

HISTORY:

Laws, 1975, ch. 481, § 7; Laws, 1990, ch. 541, § 2; Laws, 2013, ch. 388, § 1; Laws, 2017, ch. 377, § 1, eff from and after July 1, 2017.

Amendment Notes —

The 2017 amendment divided the former first sentence of (1) into the present introductory paragraph and the first sentence of (a) by inserting a colon following "except that," and adding the (a) designation; and added (1)(b) and made a related stylistic change.

Cross References —

Duties of secretary of senate and clerk of house of representatives generally, see § 5-1-31.

JUDICIAL DECISIONS

1. In general.

While a school board's failure to record any notice of a special board meeting was a violation of the Mississippi Open Meetings Act, this violation did not void the actions of the school board taken at that meeting. Shipman v. North Panola Consol. Sch. Dist., 641 So. 2d 1106, 1994 Miss. LEXIS 372 (Miss. 1994).

OPINIONS OF THE ATTORNEY GENERAL

In an emergency, the Mississippi Emergency Management Agency and local emergency management organizations may call a special meeting, provided that required notice is posted within one hour and that procedure of notification is reasonably calculated to insure that a person could find out when and where the special meeting will be held. 1992 Miss. Op. Att'y Gen. 4.

Meetings of Medicaid's Drug Use Review Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. 2002 Miss. Op. Att'y Gen. 355.

Meetings of Medicaid's Pharmacy and Therapeutics Board are subject to Mississippi's Open Meetings Law, and the board must comply with § 25-41-11, requiring minutes of meetings, whether in open or executive session, and § 25-41-13, requiring notices of meetings. 2002 Miss. Op. Att'y Gen. 355.

Failure to post notice of a called special meeting of a county school district board of trustees and failure to enter such notice in the official minutes as required by subsection (1) of this section is a violation of the Open Meetings Act. However, this violation in and of itself does not make the meeting a nullity. 2004 Miss. Op. Att'y Gen. 53.

Absent any direction to the contrary by official municipal policy, the only notice requirement applicable to a special meeting called in a city governed by a special charter is that contained in this section. In addition to following the notice requirements of this section, actual notice with reasonable opportunity to attend must be afforded to each member. The council should adopt a policy or ordinance setting out notice requirements for special meetings. Stovall, Mar. 12, 2004 Miss. Op. Att'y Gen. 0069.

Where a special meeting was called, but a quorum was not present, the minutes should contain a copy of the notice as provided in this section, the time, date and place of the meeting, the members present, and a finding that a quorum was not present to take any official actions. Stovall, Mar. 12, 2004 Miss. Op. Att'y Gen. 0069.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes making public proceedings open to the public. 38 A.L.R.3d 1070.

Am. Jur.

2 Am. Jur. 2d, Administrative Law § 223.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 141.

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A cloud over the sunshine law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-15. Enforcement.

The Mississippi Ethics Commission shall have the authority to enforce the provisions of this chapter upon a complaint filed by any person. Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission.

After a hearing, the Ethics Commission may order the public body to take whatever reasonable measures necessary, if any, to comply with this chapter. If the Ethics Commission finds that a member or members of a public body has willfully and knowingly violated the provisions of this chapter, the Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation of the provision of this chapter in a sum not to exceed Five Hundred Dollars ($500.00) for a first offense and One Thousand Dollars ($1,000.00) for a second or subsequent offense, plus all reasonable expenses incurred by the person or persons in bringing the complaint to enforce this chapter.

Nothing in this chapter shall be construed to prohibit the Ethics Commission from mediating or otherwise resolving disputes arising under this chapter or from entering orders agreed to by the parties. In carrying out its responsibilities under this section, the Ethics Commission shall have all the powers and authority granted to it in Title 25, Chapter 4, Mississippi Code of 1972.

Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review.

HISTORY:

Laws, 1975, ch. 481, § 8; Laws, 2003, ch. 495, § 1; Laws, 2008, ch. 562, § 17, eff August 5, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2011, ch. 310, § 1, eff from and after July 1, 2011.

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 17.

JUDICIAL DECISIONS

1. Explanation for executive session insufficient.

With respect to the property owner's claims that the minutes did not properly support the reason for entering into executive session, the court found that the one-page exhibit that called an executive session and gave the reason merely as " to discuss personnel and pending litigation" was an insufficient explanation for calling an executive session. Therefore, the appellate court reversed the grant of summary judgment on the claim and remanded for further proceedings in the chancery court. LaCroix v. Marshall County Bd. of Supervisors, 28 So. 3d 650, 2009 Miss. App. LEXIS 537 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 90 (Miss. 2010).

OPINIONS OF THE ATTORNEY GENERAL

The open, contumacious violation of the Open Meetings Act by a county board of supervisors is not a violation of any criminal statute. 2001 Miss. Op. Att'y Gen. 19.

The enforcement provision of the Open Meetings Act gives any member of the public, including the county supervisor, the right to enforce the Open Meetings Act in the chancery courts of the state. 2001 Miss. Op. Att'y Gen. 19.

RESEARCH REFERENCES

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act-A cloud over the sunshine law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

§ 25-41-17. Chance meetings and social gatherings excluded.

The provisions of this chapter shall not apply to chance meetings or social gatherings of members of a public body.

HISTORY:

Laws, 1981, ch. 456, § 3, eff from and after July 1, 1981.

JUDICIAL DECISIONS

1. In general.

Meeting is within Open Meetings Act when there is assemblage of members of public body at which official acts, including actions relating to formation and determination of public policy, may be taken; although purely social functions are not covered, factors to consider in making determination of whether activity is business or social include activity that takes place at function, advance call or notice given members, agenda, claim for per diem and travel expenses by members, and other pertinent factors. Board of Trustees v. Mississippi Publishers Corp., 478 So. 2d 269, 1985 Miss. LEXIS 2275 (Miss. 1985).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes making public proceedings open to the public. 38 A.L.R.3d 1070.

Law Reviews.

Note, The Personnel Matters Exception to the Mississippi Open Meetings Act – A cloud over the sunshine law. 7 Miss. C. L. Rev. 181, Spring, 1987.

Slyke & Rushing, Sunshine in Mississippi: The Open Meetings Act. 60 Miss. L. J. 283, Fall 1990.

CHAPTER 43.

ADMINISTRATIVE PROCEDURES

Sec.
25-43-1 through 25-43-19. Repealed.
Article 1. General Provisions. 25-43-1.101
Article 2. Public Access to Agency Law and Policy. 25-43-2.101
Article 3. Rule-Making Adoption and Effectiveness of Rules. 25-43-3.101
Article 4. Mississippi Small Business Regulatory Flexibility Act. 25-43-4.101

§§ 25-43-1 through 25-43-19. Repealed.

Repealed by Laws, 2003, ch. 304, § 26, effective July 1, 2005.

§ 25-43-1. [Laws, 1976, ch. 487, § 1, eff from and after January 1, 1977, eff from and after July 1, 2005.]

§ 25-43-3. [Laws, 1976, ch. 487, § 2; Laws, 1995, ch. 499, § 2, eff from and after passage (approved March 28, 1995), eff from and after July 1, 2005.]

§ 25-43-5. [Laws, 1976, ch. 487, § 3, eff from and after January 1, 1977.]

§ 25-43-7. [Laws, 1976, ch. 487, § 4, eff from and after January 1, 1977.]

§ 25-43-9. [Laws 1976, ch. 487, § 5, eff from and after January 1, 1977.]

§ 25-43-11. [Law, 1976, ch. 487, § 6, eff from and after January 1, 1977.]

§ 25-43-13. [Laws, 1976, ch. 487, § 7, eff from and after January 1, 1977.]

§ 25-43-15. [Laws, 1976, ch. 487, § 8, eff from and after January 1, 1977.]

§ 25-43-17. [Laws, 1976, ch. 487, § 9, eff from and after January 1, 1977.]

§ 25-43-19. [Laws, 1976, ch. 487, § 10, eff from and after January 1, 1977.]

Editor's Notes —

A former Chapter 43, comprising Sections 25-43-1 through 25-43-19 and also titled Administrative Procedures, was repealed by Laws of 2003, ch. 304, § 26, effective July 1, 2005. For current provisions of the Mississippi Administrative Procedures law, see §§ 25-43-1.101 through 25-43-4.108.

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
25-43-1.101. Title; statement of purpose.
25-43-1.102. Definitions.
25-43-1.103. Applicability and relation to other law.
25-43-1.104. Suspension of chapter's provisions when necessary to avoid loss of federal funds or services.
25-43-1.105. Waiver of rights.
25-43-1.106. Filings with agency; service; computation of time.
25-43-1.107. Report of conflicts between chapter and other laws; conforming legislation; compliance.

§ 25-43-1.101. Title; statement of purpose.

(1) This chapter may be cited as the "Mississippi Administrative Procedures Law."

(2) This chapter is intended to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and

duties of the public. Nothing in this chapter shall be construed as invalidating any rule or regulation adopted before July 1, 2005, if such rule or regulation was properly adopted in accordance with the law as it existed at the time of adoption. Nothing in this chapter is meant to discourage agencies from adopting procedures providing greater protections to the public or conferring additional rights upon the public; and save for express provisions of this chapter to the contrary, nothing in this chapter is meant to abrogate in whole or in part any statute prescribing procedural duties for an agency which are greater than or in addition to those provided here. This chapter is meant to apply to all rule-making that is not specifically excluded from this chapter or some portion thereof by its express terms or by the express terms of another chapter.

The purposes of the Mississippi Administrative Procedures Law are: to provide legislative oversight of powers and duties delegated to administrative agencies; to increase public accountability of administrative agencies; to simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; to increase public access to governmental information; and to increase public participation in the formulation of administrative rules. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective government administration. This chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

(3) From and after July 1, 2005, any reference to the Mississippi Administrative Procedure Act, the Mississippi Administrative Procedures Act, the Mississippi Administrative Procedure Law, or the Mississippi Administrative Procedures Law, being Section 25-43-1 et seq., Mississippi Code of 1972, shall be deemed to mean and refer to this chapter.

HISTORY:

Laws, 2003, ch. 304, § 1, eff from and after July 1, 2005.

Editor's Notes —

Laws of 2003, ch. 304, § 27, effective from and after its passage (Feb. 19, 2003), provides:

"SECTION 27. Every agency as defined in this act shall, no later than October 1, 2003, file with the Secretary of the Senate and the Clerk of the House a report which outlines any conflicts between this act and any other laws affecting the agency. This report shall include proposed legislation to bring the other laws into conformity with the requirements of this act. The Secretary of State shall, no later than December 1, 2003, file with the Secretary of the Senate and the Clerk of the House a list of sections which the Secretary of State believes conflict with this act. The Secretary of the Senate and the Clerk of the House shall maintain a list of agencies which have complied with this section."

§ 25-43-1.102. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section unless the context otherwise requires:

(a) "Agency" means a board, commission, department, officer or other administrative unit of this state, including the agency head, and one or more members of the agency head or agency employees directly or indirectly purporting to act on behalf or under the authority of the agency head. The term does not include the Legislature or any of its component units, the judiciary or any of its component units or the Governor. The term does not include a political subdivision of the state or any of the administrative units of a political subdivision. To the extent it purports to exercise authority subject to any provision of this chapter, an administrative unit otherwise qualifying as an "agency" must be treated as a separate agency even if the unit is located within or subordinate to another agency.

(b) "Agency head" or "head of the agency" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(c) "Agency proceeding" or "proceeding" means the process by which an agency considers:

(i) A declaratory opinion pursuant to Section 25-43-2.103, or

(ii) A rule pursuant to Article III of this chapter.

(d) "Agency record" means the official rule-making record of an agency pursuant to Section 25-43-3.112.

(e) "Declaratory opinion" means an agency opinion rendered in accordance with the provisions of Section 25-43-2.103.

(f) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons. An order shall be in writing signed by a person with authority to render the order, or if more than one (1) person has such authority by at least that number of such persons as jointly have the authority to render the order, or by a person authorized to render the order on behalf of all such persons. The term does not include an executive order issued by the Governor pursuant to Section 25-43-1.104, an opinion issued by the Attorney General pursuant to Section 7-5-25, an opinion issued by the Ethics Commission pursuant to Section 25-4-17, or a declaratory opinion rendered in accordance with Section 25-43-2.103.

(g) "Person" means an individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(h) "Provision of law" or "law" means the whole or a part of the federal or state Constitution, or of any federal or state (i) statute, (ii) case law or common law, (iii) rule of court, (iv) executive order, or (v) rule or order of an administrative agency.

(i) "Rule" means the whole or a part of an agency regulation or other statement of general applicability that implements, interprets or prescribes:

(i) Law or policy, or

(ii) The organization, procedure or practice requirements of an agency. The term includes the amendment, repeal or suspension of an existing rule. "Rule" does not include:

1. A regulation or statement concerning only the internal manage-

ment of an agency which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public;

2. A regulation or statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations or inspections, settling commercial disputes, negotiating commercial arrangements or in the defense, prosecution or settlement of cases, if disclosure of the criteria or guidelines would:

a. Enable law violators to avoid detection;

b. Facilitate disregard of requirements imposed by law; or

c. Give a clearly improper advantage to persons who are in an adverse position to the state;

3. A regulation or statement that only establishes specific prices to be charged for particular goods or services sold by an agency;

4. A regulation or statement concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property;

5. A regulation or statement relating only to the use of a particular facility or property owned, operated or maintained by the state or any of its subdivisions, if the substance of the regulation or statement is adequately indicated by means of signs or signals to persons who use the facility or property;

6. A regulation or statement directly related only to inmates of a correctional or detention facility, students enrolled in an educational institution or patients admitted to a hospital, if adopted by that facility, institution or hospital;

7. A form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form;

8. An agency budget;

9. A compact or agreement between an agency of this state and one or more agencies of another state or states; or

10. An opinion of the Attorney General pursuant to Section 7-5-25, an opinion of the Ethics Commission pursuant to Section 25-4-17, or an Executive Order of the Governor.

(j) "Rule-making" means the process for formulation and adoption of a rule.

HISTORY:

Laws, 2003, ch. 304, § 2; Laws, 2005, ch. 499, § 34, eff from and after July 1, 2005.

JUDICIAL DECISIONS

1. Regulation or statement.

Mississippi Department of Corrections (MDOC) execution protocol is a "regulation or statement" related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr., 98 So. 3d 459, 2012 Miss. LEXIS 409 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a "regulation or statement" related only to inmates of the MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the notice and comment requirements of the MAPL because it was an internal policy concerning lethal injections and the manner in which executions were carried out. Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr., 98 So. 3d 459, 2012 Miss. LEXIS 409 (Miss. 2012).

OPINIONS OF THE ATTORNEY GENERAL

A proposed regulation of the Mississippi Wireless Communication Commission (WCC) placing a limited moratorium on the procurement of wireless communication services by local governments would fall within the definition of "rule" in the Administrative Procedures Law (APL), thereby requiring the WCC to comply with the APL's filing and notice requirements. 2005 Miss. Op. Att'y Gen. 440.

Instructions for the use of an agency "form whose contents or substantive requirements are prescribed by rule or statute" are exempt from the APA's filing and notice procedures. Whether the contents or substantive requirements of the form, including its accompanying instructions, have been prescribed by a rule or statute is a factual determination. 2006 Miss. Op. Att'y Gen. 56.

A regional housing authority is not an "agency" for purposes of the Administrative Procedures Law and is thus exempt from the requirements thereof, including the filing of rules. 2006 Miss. Op. Att'y Gen. 152.

§ 25-43-1.103. Applicability and relation to other law.

(1) This chapter applies to all agencies and all proceedings not expressly exempted under this chapter.

(2) This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(3) Specific statutory provisions which govern agency proceedings and which are in conflict with any of the provisions of this chapter shall continue to be applied to all proceedings of any such agency to the extent of such conflict only.

(4) The provisions of this chapter shall not be construed to amend, repeal or supersede the provisions of any other law; and, to the extent that the provisions of any other law conflict or are inconsistent with the provisions of this chapter, the provisions of such other law shall govern and control.

(5) An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred upon other persons by any provision of law are not substantially prejudiced.

HISTORY:

Laws, 2003, ch. 304, § 3, eff from and after July 1, 2005.

§ 25-43-1.104. Suspension of chapter's provisions when necessary to avoid loss of federal funds or services.

(1) To the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the state, the Governor, by executive order, may suspend, in whole or in part, one or more provisions of

this chapter. The Governor, by executive order, shall declare the termination of a suspension as soon as it is no longer necessary to prevent the loss of funds or services from the United States.

(2) If any provision of this chapter is suspended pursuant to this section, the Governor shall promptly report the suspension to the Legislature. The report may include recommendations concerning desirable legislation that may be necessary to conform this chapter to federal law, including the exemption, if appropriate, of a particular program from the provisions of this chapter.

HISTORY:

Laws, 2003, ch. 304, § 4, eff from and after July 1, 2005.

§ 25-43-1.105. Waiver of rights.

Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter, or by any rule made pursuant to this chapter.

HISTORY:

Laws, 2003, ch. 304, § 5, eff from and after July 1, 2005.

§ 25-43-1.106. Filings with agency; service; computation of time.

(1)(a) Whenever, under this chapter, a party or any person is permitted or required to file with an agency any pleading, motion or other document, filing must be made by delivery of the document to the agency, by mailing it to the agency or by transmitting it to the agency by electronic means, including, but not limited to, facsimile transfer or e-mail. Filing by electronic means is complete when the electronic equipment being used by the agency acknowledges receipt of the material. If the equipment used by the agency does not automatically acknowledge transmission, service is not complete until the filing party obtains an acknowledgment from the agency. Filing by mail is complete upon receipt by the agency.

(b) The agency may implement this section by agency rule.

(2)(a) Whenever service is required by this chapter, and whether the service is made by a party, an agency or a presiding officer, service of orders, notices, pleadings, motions and other documents upon a party shall be made by delivering a copy to the party, by transmitting it to the party by electronic means, including, but not limited to, facsimile transfer or e-mail, or by mailing it to the party at the party's last known address. Delivery of a copy means handing it to a party, leaving it at the office of a party with a person in charge thereof, or leaving it at the dwelling house or usual place of abode of the party with some person of suitable age and discretion then residing therein. Service by electronic means is complete when the electronic equipment being used by the party being served acknowledges receipt of the material. If the equipment used by the party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgment from the recipient. Service by mail is complete upon mailing.

(b) Whenever service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon such attorney.

(c) Whenever an agency issues an order or serves a notice or other document, the order or notice or other document shall be dated and shall be deemed to have been issued on the day it is served on the parties to the matter. If the order or notice or other document is to be served by mail, it shall be dated and shall be deemed to have been issued on the day it is mailed.

(3)(a) In computing any period of time prescribed or allowed by this Article 1, by order of an agency, or by any applicable statute or agency rule, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, as defined by statute, or any other day when the agency's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday or any other day when the agency's office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.

(b) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice, order, pleading, motion or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

HISTORY:

Laws, 2003, ch. 304, § 6, eff from and after July 1, 2005.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (1)(a) was corrected by substituting "...this chapter..." for "...this act..."

§ 25-43-1.107. Report of conflicts between chapter and other laws; conforming legislation; compliance.

Every agency as defined in this chapter shall, no later than October 1, 2003, file with the Secretary of the Senate and the Clerk of the House a report which outlines any conflicts between this chapter and any other laws affecting the agency. This report shall include proposed legislation to bring the other laws into conformity with the requirements of this chapter. The Secretary of State shall, no later than December 1, 2003, file with the Secretary of the Senate and the Clerk of the House a list of sections which the Secretary of State believes conflict with this chapter. The Secretary of the Senate and the

Clerk of the House shall maintain a list of agencies which have complied with this section.

HISTORY:

Laws, 2003, ch. 304, § 27 eff from and after passage (approved Feb. 19, 2003.).

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in statutory references in this section were corrected by substituting "...this chapter..." for "...this act..." throughout the section.

ARTICLE 2.

PUBLIC ACCESS TO AGENCY LAW AND POLICY.

Sec.
25-43-2.101. Publication, compilation, indexing and public inspection of rules.
25-43-2.102. Public inspection and indexing of agency orders.
25-43-2.103. Declaratory opinions.
25-43-2.104. Required rule-making.
25-43-2.105. Model rules of procedure.

§ 25-43-2.101. Publication, compilation, indexing and public inspection of rules.

(1) Subject to the provisions of this chapter, the Secretary of State shall prescribe a uniform numbering system, form, style and transmitting format for all proposed and adopted rules caused to be published by him and, with prior approval of each respective agency involved, may edit rules for publication and codification without changing the meaning or effect of any rule.

(2) The Secretary of State shall cause an administrative bulletin to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule. Upon proper filing of proposed rules, the Secretary of State shall publish them in the administrative bulletin as expeditiously as possible. The administrative bulletin must contain:

(a) Notices of proposed rule adoption prepared so that the text of the proposed rule shows the text of any existing rule proposed to be changed and the change proposed;

(b) Any other notices and materials designated by law for publication therein; and

(c) An index to its contents by subject.

(3) The Secretary of State shall cause an administrative bulletin to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule. Upon proper filing of newly adopted rules, the Secretary of State shall publish them as expeditiously as possible. The administrative bulletin must contain:

(a) Newly filed adopted rules prepared so that the text shows the text of any existing rule being changed and the change being made;

(b) Any other notices and materials designated by law for publication therein; and

(c) An index to its contents by subject.

(4) The Secretary of State retains the authority to reject proposed and newly adopted rules not properly filed in accordance with the Secretary of State's rules prescribing the numbering system, form, style or transmitting format for such filings. The Secretary of State shall not be empowered to reject filings for reasons of the substance or content or any proposed or newly adopted rule. The Secretary of State shall notify the agency of its rejection of a proposed or newly adopted rule as expeditiously as possible and accompany such notification with a stated reason for the rejection. A rejected filing of a proposed or newly adopted rule does not constitute filing pursuant to Section 25-43-3.101 et seq. of this chapter.

(5)(a) The Secretary of State shall cause an administrative code to be compiled, indexed by subject and published in a format prescribed by the Secretary of State by rule. All of the effective rules of each agency must be published and indexed in that publication. The Secretary of State shall also cause supplements to the administrative code to be published in a format and at such regular intervals as the Secretary of State shall prescribe by rule.

(b) The Joint Legislative Committee on Compilation, Revision and Publication of Legislation is hereby authorized to contract with a reputable and competent publishing company on such terms and conditions and at such prices as may be deemed proper to digest, compile, annotate, index and publish the state agency rules and regulations.

(6)(a) Copyrights of the Mississippi Administrative Code, including, but not limited to, cross references, tables of cases, notes of decisions, tables of contents, indices, source notes, authority notes, numerical lists and codification guides, other than the actual text of rules or regulations, shall be taken by and in the name of the publishers of said compilation. Such publishers shall thereafter promptly assign the same to the State of Mississippi and said copyright shall be owned by the state.

(b) Any information appearing on the same leaf with the text of any rule or regulation may be incidentally reproduced in connection with the reproduction of such rule or regulation, if such reproduction is for private use and not for resale.

(7) The Secretary of State may omit from the administrative bulletin or code any proposed or filed adopted rule, the publication in hard copy of which would be unduly cumbersome, expensive or otherwise inexpedient, if:

(a) Knowledge of the rule is likely to be important to only a small class of persons;

(b) On application to the issuing agency, the proposed or adopted rule in printed or processed form is made available at no more than its cost of reproduction; and

(c) The administrative bulletin or code contains a notice stating in detail the specific subject matter of the omitted proposed or adopted rule and how a copy of the omitted material may be obtained.

(8) The administrative bulletin and administrative code with supplements must be furnished to designated officials without charge and to all

subscribers at a reasonable cost to be determined by the Secretary of State. Each agency shall also make available for public inspection and copying those portions of the administrative bulletin and administrative code containing all rules adopted or used by the agency in the discharge of its functions, and the index to those rules.

HISTORY:
Laws, 2003, ch. 304, § 7, eff from and after July 1, 2005.

§ 25-43-2.102. Public inspection and indexing of agency orders.

(1) In addition to other requirements imposed by any provision of law, and subject to any confidentiality provisions established by law, each agency shall make all written final orders available for public inspection and copying and index them by name and subject.

(2) A written final order available for public inspection pursuant to subsection (1) may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in subsection (1) of this section. This provision is inapplicable to any person who has actual, timely knowledge of the order. The burden of proving that knowledge is on the agency.

HISTORY:
Laws, 2003, ch. 304, § 8, eff from and after July 1, 2005.

§ 25-43-2.103. Declaratory opinions.

(1) Any person with a substantial interest in the subject matter may make a written request of an agency for a declaratory opinion as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency. Such written request must clearly set forth the specific facts upon which an opinion is asked for and shall be limited to a single transaction or occurrence. An agency, through the agency head or its designee(s) by rule, shall issue a declaratory opinion in response to a written request for that opinion unless the agency determines that issuance of the opinion under the circumstances would be contrary to a rule adopted in accordance with subsection (2) of this section.

(2) Each agency shall issue rules that provide for: (a) the form, contents and filing of written requests for declaratory opinions; (b) the procedural rights of persons in relation to the written requests; and (c) the disposition of the written requests. Those rules must describe the classes of circumstances in which the agency will not issue a declaratory opinion.

(3) Within forty-five (45) days after receipt of a written request for a declaratory opinion, an agency, in writing, shall:

(a) Issue an opinion declaring the applicability of the statute, rule or order in question to the specified circumstances;

(b) Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or

(c) Decline to issue a declaratory opinion, stating the reasons for its action.

(4) A copy of all opinions issued in response to a written request for a declaratory opinion must be mailed promptly to the requesting person.

(5)(a) When any person receives a declaratory opinion from an agency and shall have stated all the facts to govern such opinion, the agency shall take no civil or criminal action against such person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. No declaratory opinion shall be given or considered if the opinion is requested after suit is filed or prosecution begun. Any declaratory opinion rendered pursuant to this chapter shall not be binding or effective for any third party or person other than the agency issuing the declaratory opinion and the person to whom the opinion is issued and shall not be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

(b) The authority of persons to request and receive agency declaratory opinions in no way affects the ability of any person authorized by Section 7-5-25 to request a legal opinion from the Attorney General.

(c) Subject to any confidentiality provisions established by law, each agency shall make all declaratory opinions available for public inspection and copying and shall index them by name and subject, unless information contained within such opinions is confidential by statute or exempt from public disclosure pursuant to another provision of law.

(6) Without in any way limiting a person's right to request and receive a declaratory opinion under this section, or an agency's duty to issue a declaratory opinion under this section, nothing contained in this section shall prohibit an agency from providing informal responses or advice, orally or in writing, to any inquiries or requests for information submitted to the agency. Informal responses shall not be considered a declaratory opinion under this section.

HISTORY:

Laws, 2003, ch. 304, § 9; Laws, 2005, ch. 499, § 35, eff from and after July 1, 2005.

§ 25-43-2.104. Required rule-making.

In addition to other rule-making requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of the organization of the agency which states the general course and method of its operations and where and how the public may obtain information or make submissions or requests;

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal proceedings available to the public.

HISTORY:
Laws, 2003, ch. 304, § 10, eff from and after July 1, 2005.

§ 25-43-2.105. Model rules of procedure.

In accordance with the rule-making requirements of this chapter, the Secretary of State shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules must deal with all general functions and duties performed in common by several agencies. Each agency may adopt as much of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rule-making requirements of this chapter.

HISTORY:
Laws, 2003, ch. 304, § 11, eff from and after July 1, 2005.

ARTICLE 3.

RULE-MAKING ADOPTION AND EFFECTIVENESS OF RULES.

Sec.	
25-43-3.101.	Advice on possible rules before notice of proposed rule adoption.
25-43-3.102.	Public rule-making docket.
25-43-3.103.	Notice of proposed rule adoption.
25-43-3.104.	Public participation.
25-43-3.105.	Economic impact statement, requirement and conditions.
25-43-3.106.	Time and manner of rule adoption.
25-43-3.107.	Variance between adopted rule and published notice of proposed rule adoption.
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25-43-3.109.	Contents, style and form of rule.
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25-43-3.111.	Invalidity of rules not adopted according to article; time limitation.
25-43-3.112.	Filing of rules.
25-43-3.113.	Effective date of rules.
25-43-3.114.	Review by agency; review of all rules by boards subject to supervision by the Occupational Licensing Review Commission.

§ 25-43-3.101. Advice on possible rules before notice of proposed rule adoption.

(1) In addition to seeking information by other methods, an agency, before filing of a notice of proposed rule adoption under Section 25-43-3.103, may solicit comments from the public on a subject matter of possible rule-making under active consideration within the agency by causing notice to be filed with the Secretary of State for publication in the administrative bulletin of the subject matter and indicating where, when and how persons may comment.

(2) Each agency may also appoint committees of nonagency personnel or other members of the public to comment, before filing of a notice of proposed rule adoption under Section 25-43-3.103, on the subject matter of a possible rule-making under active consideration within the agency. The membership of

those committees must be filed with the Secretary of State for publication in the administrative bulletin.

HISTORY:

Laws, 2003, ch. 304, § 12, eff from and after July 1, 2005.

JUDICIAL DECISIONS

1. Promulgation of new rule not found.

Chancellor did not manifestly err by finding that the Mississippi State Tax Commission's requirement of an alternative apportionment method for a taxpayer's income did not amount to a rule, unduly promulgated in violation of the Mississippi Administrative Procedures Act because the Commission utilized an existing alternative method as prescribed under an existing rule. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36, 2013 Miss. LEXIS 346 (Miss. 2013), cert. denied, — U.S. —, 134 S. Ct. 2872, 189 L. Ed. 2d 833, 2014 U.S. LEXIS 4578 (U.S. 2014).

§ 25-43-3.102. Public rule-making docket.

(1) Each agency shall maintain a current, public rule-making docket.

(2) The rule-making docket may, but need not, contain a listing of the subject matter of possible rules currently under active consideration within the agency for proposal under Section 25-43-3.103 and the name and address of agency personnel with whom persons may communicate with respect to the matter.

(3) The rule-making docket must list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by proper filing with the Secretary of State of a notice of proposed rule adoption, to the time it is terminated by the filing with the Secretary of State of a notice of termination or the rule becoming effective. For each pending rule-making proceeding, the docket must indicate:

(a) The subject matter of the proposed rule;

(b) A citation to all published notices relating to the proceeding;

(c) Where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected;

(d) The time during which written submissions may be made;

(e) If applicable, where and when oral presentations may be made;

(f) Where any economic impact statement and written requests for the issuance of and other information concerning an economic impact statement of the proposed rule may be inspected;

(g) The current status of the proposed rule;

(h) The date of the rule's adoption; and

(i) When the rule will become effective.

HISTORY:

Laws, 2003, ch. 304, § 13, eff from and after July 1, 2005.

§ 25-43-3.103. Notice of proposed rule adoption.

(1) At least twenty-five (25) days before the adoption of a rule an agency

shall cause notice of its contemplated action to be properly filed with the Secretary of State for publication in the administrative bulletin. The notice of proposed rule adoption must include:

(a) A short explanation of the purpose of the proposed rule and the agency's reasons for proposing the rule;

(b) The specific legal authority authorizing the promulgation of rules;

(c) A reference to all rules repealed, amended or suspended by the proposed rule;

(d) Subject to Section 25-43-2.101(5), the text of the proposed rule;

(e) Where, when and how persons may present their views on the proposed rule; and

(f) Where, when and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

(2) Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the agency shall cause a copy of the notice of proposed rule adoption to be provided to each person who has made a timely request to the agency to be placed on the mailing list maintained by the agency of persons who have requested notices of proposed rule adoptions. An agency may mail the copy to the person and may charge the person a reasonable fee for such service, which fee may be in excess of the actual cost of providing the person with a mailed copy. Alternatively, the agency may provide the copy via the Internet or by transmitting it to the person by electronic means, including, but not limited to, facsimile transfer or e-mail at no charge to the person, if the person consents to this form of delivery.

HISTORY:

Laws, 2003, ch. 304, § 14, eff from and after July 1, 2005.

§ 25-43-3.104. Public participation.

(1) For at least twenty-five (25) days after proper filing with the Secretary of State of the notice of proposed rule adoption, an agency shall afford persons the opportunity to submit, in writing, argument, data and views on the proposed rule.

(2)(a) An agency, in its discretion, may schedule an oral proceeding on any proposed rule. However, an agency shall schedule an oral proceeding on a proposed rule if, within twenty (20) days after the proper filing of the notice of proposed rule adoption, a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. At that proceeding, persons may present oral or written argument, data and views on the proposed rule.

(b) An oral proceeding on a proposed rule, if required, may not be held earlier than twenty (20) days after notice of its location and time is properly filed with the Secretary of State for publication in the administrative bulletin. Within three (3) days after its proper filing with the Secretary of State for publication in the administrative bulletin, the agency shall cause a copy of the notice of the location and time of the oral proceeding to be mailed to each person who has made a timely request to the agency to be placed on the mailing list maintained by the agency of persons who have requested notices of proposed rule adoptions.

(c) The agency, a member of the agency, or another presiding officer designated by the agency shall preside at a required oral proceeding on a proposed rule. Oral proceedings must be open to the public and may be recorded by stenographic or other means.

(d) An agency may issue rules for the conduct of oral rule-making proceedings or prepare reasonable guidelines or procedures for the conduct of any such proceedings. Those rules may include, but not be limited to, provisions calculated to prevent undue repetition in the oral proceedings.

HISTORY:

Laws, 2003, ch. 304, § 15, eff from and after July 1, 2005.

§ 25-43-3.105. Economic impact statement, requirement and conditions.

(1) Prior to giving the notice required in Section 25-43-3.103, each agency proposing the adoption of a rule or significant amendment of an existing rule imposing a duty, responsibility or requirement on any person shall consider the economic impact the rule will have on the citizens of our state and the benefits the rule will cause to accrue to those citizens. For purposes of this section, a "significant amendment" means any amendment to a rule for which the total aggregate cost to all persons required to comply with that rule exceeds One Hundred Thousand Dollars ($100,000.00).

(2) Each agency shall prepare a written report providing an economic impact statement for the adoption of a rule or significant amendment to an existing rule imposing a duty, responsibility or requirement on any person, except as provided in subsection (7) of this section. The economic impact statement shall include the following:

(a) A description of the need for and the benefits which will likely accrue as the result of the proposed action;

(b) An estimate of the cost to the agency, and to any other state or local government entities, of implementing and enforcing the proposed action, including the estimated amount of paperwork, and any anticipated effect on state or local revenues;

(c) An estimate of the cost or economic benefit to all persons directly affected by the proposed action;

(d) An analysis of the impact of the proposed rule on small business;

(e) A comparison of the costs and benefits of the proposed rule to the probable costs and benefits of not adopting the proposed rule or significantly amending an existing rule;

(f) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule where reasonable alternative methods exist which are not precluded by law;

(g) A description of reasonable alternative methods, where applicable, for achieving the purpose of the proposed action which were considered by the agency and a statement of reasons for rejecting those alternatives in favor of the proposed rule; and

(h) A detailed statement of the data and methodology used in making estimates required by this subsection.

(3) No rule or regulation shall be declared invalid based on a challenge to the economic impact statement for the rule unless the issue is raised in the agency proceeding. No person shall have standing to challenge a rule, based upon the economic impact statement or lack thereof, unless that person provided the agency with information sufficient to make the agency aware of specific concerns regarding the statement in an oral proceeding or in written comments regarding the rule. The grounds for invalidation of an agency action, based upon the economic impact statement, are limited to the agency's failure to adhere to the procedure for preparation of the economic impact statement as provided in this section, or the agency's failure to consider information submitted to the agency regarding specific concerns about the statement, if that failure substantially impairs the fairness of the rule-making proceeding.

(4) A concise summary of the economic impact statement must be properly filed with the Secretary of State for publication in the administrative bulletin and the period during which persons may make written submissions on the proposed rule shall not expire until at least twenty (20) days after the date of such proper filing.

(5) The properly filed summary of the economic impact statement must also indicate where persons may obtain copies of the full text of the economic impact statement and where, when and how persons may present their views on the proposed rule and demand an oral proceeding on the proposed rule if one is not already provided.

(6) If the agency has made a good-faith effort to comply with the requirements of subsections (1) and (2) of this section, the rule may not be invalidated on the ground that the contents of the economic impact statement are insufficient or inaccurate.

(7) This section does not apply to the adoption of:

(a) Any rule which is required by the federal government pursuant to a state/federal program delegation agreement or contract;

(b) Any rule which is expressly required by state law; and

(c) A temporary rule adopted pursuant to Section 25-43-3.108.

HISTORY:

Laws, 2003, ch. 304, § 16; Laws, 2012, ch. 454, § 10, eff from and after July 1, 2012.

§ 25-43-3.106. Time and manner of rule adoption.

(1) An agency may not adopt a rule until the period for making written submissions and oral presentations has expired.

(2) Following the proper filing with the Secretary of State of the notice of proposed rule adoption, an agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by proper filing with the

Secretary of State of a notice to that effect for publication in the administrative bulletin.

(3) Before the adoption of a rule, an agency shall consider the written submissions, oral submissions or any memorandum summarizing oral submissions, and any economic impact statement, provided for by this Article III.

(4) Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

HISTORY:

Laws, 2003, ch. 304, § 17, eff from and after July 1, 2005.

§ 25-43-3.107. Variance between adopted rule and published notice of proposed rule adoption.

(1) An agency shall not adopt a rule that differs from the rule proposed in the notice of proposed rule adoption on which the rule is based unless all of the following apply:

(a) The differences are within the scope of the matter announced in the notice of proposed rule adoption and are in character with the issues raised in that notice;

(b) The differences are a logical outgrowth of the contents of that notice of proposed rule adoption and the comments submitted in response thereto; and

(c) The notice of proposed rule adoption provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

(2) In determining whether the notice of proposed rule adoption provided fair warning that the outcome of that rule-making proceeding could be the rule in question, an agency shall consider all of the following factors:

(a) The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

(b) The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of proposed rule adoption; and

(c) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of proposed rule adoption.

HISTORY:

Laws, 2003, ch. 304, § 18, eff from and after July 1, 2005.

§ 25-43-3.108. Exemption from public rule-making procedures for temporary rules.

If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty-five (25) days' notice and states in writing its reasons for that finding, it may proceed without prior notice of hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than one hundred twenty (120) days, renewable once for a period not exceeding ninety (90) days, but the adoption of an identical rule under subsection (1) of this section is not precluded.

HISTORY:

Laws, 2003, ch. 304, § 19, eff from and after July 1, 2005.

§ 25-43-3.109. Contents, style and form of rule.

(1) Each rule adopted by an agency must contain the text of the rule and:

(a) The date the agency adopted the rule;

(b) An indication of any change between the text of the proposed rule contained in the published notice of proposed rule adoption and the text of the rule as finally adopted, with the reasons for any substantive change;

(c) Any changes to the information contained in the notice of proposed rule adoption as required by subsection (1)(a), (b) or (c) of Section 25-43-3.103;

(d) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule; and

(e) The effective date of the rule if other than that specified in Section 25-43-3.113(1).

(2) To the extent feasible, each rule should be written in clear and concise language understandable to persons who may be affected by it.

(3) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient. The reference in the agency rules must fully identify the incorporated matter with an appropriate citation. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public. The rules must state if copies of the incorporated matter are available from the agency issuing the rule or where copies of the incorporated matter are available from the agency of the United States, this state, another state or the organization or association originally issuing that matter.

(4) In preparing its rules pursuant to this Article III, each agency shall follow the uniform numbering system, form and style prescribed by the Secretary of State.

HISTORY:

Laws, 2003, ch. 304, § 20, eff from and after July 1, 2005.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (1)(c) was corrected by substituting "...subsection (1)(a), (b) or (c)..." for "...subsection (a), (b) or (c)..."

§ 25-43-3.110. Agency rule-making record.

(1) An agency shall maintain an official rule-making record for each rule it (a) proposes or (b) adopts. The agency has the exclusive authority to prepare and exclusive authority to certify the record or any part thereof, including, but not limited to, any transcript of the proceedings, and the agency's certificate shall be accepted by the court and by any other agency. The record must be available for public inspection.

(2) The agency rule-making record must contain:

(a) Copies of all notices of proposed rule-making or oral proceedings or other publications in the administrative bulletin with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

(c) All written requests, submissions and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal or adoption of the rule or the proceeding upon which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations. The word "transcript" includes a written transcript, a printed transcript, an audible audiotape or videotape that is indexed and annotated so that it is readily accessible and any other means that the agency may have by rule provided for the reliable and accessible preservation of the proceeding;

(e) A copy of any economic impact statement prepared for the proceeding upon which the rule is based; and

(f) A copy of the rule and related information set out in Section 25-43-3.109 as filed in the Office of the Secretary of State.

(3) The agency shall have authority to engage such persons and acquire such equipment as may be reasonably necessary to record and preserve in any technically and practicably feasible manner all matters and all proceedings had at any rule-making proceeding.

(4) Upon judicial review, the record required by this section constitutes the official agency rule-making record with respect to a rule. Except as otherwise required by a provision of law, the agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

HISTORY:

Laws, 2003, ch. 304, § 21, eff from and after July 1, 2005.

§ 25-43-3.111. Invalidity of rules not adopted according to article; time limitation.

(1) A rule adopted after July 1, 2005, is invalid unless adopted in substantial compliance with the provisions of Sections 25-43-3.102 through 25-43-3.110. Inadvertent failure to mail a notice of proposed rule adoption to any person as required by Section 25-43-3.103(2) does not invalidate a rule.

(2) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of Sections 25-43-3.102 through 25-43-3.110 must be commenced within one (1) year after the effective date of the rule.

HISTORY:

Laws, 2003, ch. 304, § 22, eff from and after July 1, 2005.

JUDICIAL DECISIONS

1. Exemption.

Mississippi Department of Corrections (MDOC) execution protocol is a "regulation or statement" related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr., 98 So. 3d 459, 2012 Miss. LEXIS 409 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a "regulation or statement" related only to inmates of the MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the notice and comment requirements of the MAPL because it was an internal policy concerning lethal injections and the manner in which executions were carried out. Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr., 98 So. 3d 459, 2012 Miss. LEXIS 409 (Miss. 2012).

§ 25-43-3.112. Filing of rules.

An agency shall file in the Office of the Secretary of State each rule it adopts and all rules existing on July 1, 2005, that have not previously been filed. The filing must be done as soon after adoption of the rule as is practicable. At the time of filing, each rule adopted after July 1, 2005, must have included in or attached to it the material set out in Section 25-43-3.109. The Secretary of State shall affix to each rule and statement a certification of the date of filing and keep a permanent register open to public inspection of all filed rules and attached material. In filing a rule, each agency shall use a standard format prescribed by the Secretary of State.

HISTORY:

Laws, 2003, ch. 304, § 23, eff from and after July 1, 2005.

§ 25-43-3.113. Effective date of rules.

(1) Except to the extent subsection (2) or (3) of this section provides

otherwise, each rule adopted after July 1, 2005, becomes effective thirty (30) days after its proper filing in the Office of the Secretary of State.

(2)(a) A rule becomes effective on a date later than that established by subsection (1) of this section if a later date is required by another statute or specified in the rule.

(b) A rule may become effective immediately upon its filing or on any subsequent date earlier than that established by subsection (1) of this section if the agency establishes such an effective date and finds that:

(i) It is required by Constitution, statute or court order;

(ii) The rule only confers a benefit or removes a restriction on the public or some segment thereof;

(iii) The rule only delays the effective date of another rule that is not yet effective; or

(iv) The earlier effective date is necessary because of imminent peril to the public health, safety or welfare.

(c) The finding and a brief statement of the reasons therefor required by paragraph (b) of this subsection must be made a part of the rule. In any action contesting the effective date of a rule made effective under paragraph (b) of this subsection, the burden is on the agency to justify its finding.

(d) A temporary rule may become effective immediately upon its filing or on any subsequent date earlier than that established by subsection (1) of this section.

(e) Each agency shall make a reasonable effort to make known to persons who may be affected by it a rule made effective before any date established by subsection (1) of this section.

(3) This section does not relieve an agency from compliance with any provision of law requiring that some or all of its rules be approved by other designated officials or bodies before they become effective.

HISTORY:

Laws, 2003, ch. 304, § 24, eff from and after July 1, 2005.

§ 25-43-3.114. Review by agency; review of all rules by boards subject to supervision by the Occupational Licensing Review Commission.

(1) At least every five (5) years, each agency shall review all of its rules to determine whether any rule should be repealed, amended or a new rule adopted.

(2) At least every three (3) years, each board subject to supervision by the Occupational Licensing Review Commission shall review all of its rules to determine whether any rule should be repealed, amended or a new rule adopted, and shall submit a report of the review to the Occupational Licensing Review Commission.

HISTORY:

Laws, 2003, ch. 304, § 25, eff from and after July 1, 2005; Laws, 2018, ch. 439, § 1, eff from and after July 1, 2018.

Amendment Notes —
The 2018 amendment added (2).

ARTICLE 4.

MISSISSIPPI SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

Sec.
25-43-4.101. Short title.
25-43-4.102. Definitions.
25-43-4.103. Small Business Regulatory Review Committee; duties, relation to Mississippi Development Authority, composition, terms, meetings, quorum.
25-43-4.104. Economic impact upon small business statement requirement and conditions; review and comment by committee; periodic review of final rule.
25-43-4.105. Committee opposition to promulgated regulations; agency response.
25-43-4.106. Annual report.
25-43-4.107. Waiver of or reduction in administrative penalty or fine under certain circumstances.
25-43-4.108. Applicability and relation to other laws.
25-43-4.109. Repealed.

§ 25-43-4.101. Short title.

This article may be cited as the "Mississippi Small Business Regulatory Flexibility Act."

HISTORY:
Laws, 2012, ch. 454, § 1; reenacted without change, Laws, 2016, ch. 411, § 1, eff from and after July 1, 2016.

§ 25-43-4.102. Definitions.

As used in this article:

(a) "Agency" is defined in Section 25-43-1.102.

(b) "Department" means the Mississippi Development Authority.

(c) "Committee" means the Small Business Regulatory Review Committee.

(d) "Rule" is defined in Section 25-43-1.102, except that the term "rule" shall not include emergency or preemptive rules.

(e) "Small business" means a for-profit business entity employing fewer than one hundred (100) full-time employees or having gross annual sales or revenues of less than Ten Million Dollars ($10,000,000.00).

HISTORY:
Laws, 2012, ch. 454, § 2; reenacted without change, Laws, 2016, ch. 411, § 2, eff from and after July 1, 2016.

§ 25-43-4.103. Small Business Regulatory Review Committee; duties, relation to Mississippi Development Authority, composition, terms, meetings, quorum.

(1) There is established a Small Business Regulatory Review Committee.

(2) The duties of the committee shall be to:

(a) Provide agencies with input regarding proposed permanent rules which may have an economic impact upon small business and for which a notice of intended action is published by the Secretary of State on or after July 1, 2012;

(b) Review any rule promulgated by a state agency for which notice has been given by the agency to the committee that the proposed rule has or may have an economic effect upon small business and make recommendations to the agency and or the Legislature regarding the need for a rule or legislation;

(c) Petition an agency to amend, revise, or revoke an existing regulation based on an economic impact on small business; and

(d) Advise and assist agencies in complying with the provisions of and perform any and all acts and duties set forth and authorized in the Mississippi Small Business Regulatory Flexibility Act.

(3) The committee is assigned to the Mississippi Development Authority for administrative purposes only. The department shall act as a coordinator for the committee, and shall not be required to provide legal counsel for the committee.

(4) The committee shall consist of twelve (12) members, appointed as follows:

(a) Four (4) members to be appointed by the Governor, one (1) of whom shall be the Executive Director of the Mississippi Development Authority, or his designee;

(b) Four (4) members to be appointed by the Lieutenant Governor, two (2) of whom may be State Senators who own small businesses; and

(c) Four (4) members to be appointed by the Speaker of the House of Representatives, two (2) of whom may be State Representatives who own small businesses.

Any legislative member appointed to the committee shall serve as an ex officio, nonvoting member.

(5) The appointing authorities shall appoint members of the committee for which no qualifications are specified under subsection (4) from:

(a) Lists of nominees, which may include small business owners, association representatives and small business regulatory advisors who have legal or accounting experience, submitted by the following business organizations:

(i) National Federation of Independent Business;

(ii) Mississippi Manufacturers Association;

(iii) Mississippi Retail Association;

(iv) Mississippi Petroleum Marketers and Convenience Stores Association;

(v) Mississippi Minority Contractors Association;

(vi) Mississippi Economic Council;

(vii) Mississippi Farm Bureau Federation; and

(viii) Any local chamber of commerce; and/or

(b) Small business owners or operators not affiliated with or nominated by the business organizations listed in paragraph (a) of this subsection.

(6) Appointments to the committee shall be representative of a variety of small businesses in this state. Except as otherwise provided in this section,

appointed members shall be either current or former owners or principal officers of a small business.

(7) The initial appointments to the committee shall be made within sixty (60) days from July 1, 2012. The Mississippi Development Authority shall provide the name and address of each appointee to the Governor, Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Secretary of State.

(8)(a) Members initially appointed to the committee shall serve for terms ending December 31, 2014. Thereafter, appointed members shall serve two-year terms that expire on December 31 of the second year.

(b) The Governor shall appoint the initial chair of the committee from the appointed members for a term ending December 31, 2014. Subsequent chairs of the committee shall be elected by the committee from the appointed members for two-year terms that expire on December 31 of the second year.

(9) Members of the committee shall not receive any compensation.

(10) The committee shall meet as determined by the chair of the committee.

(11) A majority of the voting members of the committee shall constitute a quorum to do business. The concurrence of a majority of the members of the committee present and voting shall be necessary to make any action of the committee valid.

HISTORY:

Laws, 2012, ch. 454, § 3; reenacted and amended, Laws, 2016, ch. 411, § 3, eff from and after July 1, 2016.

§ 25-43-4.104. Economic impact upon small business statement requirement and conditions; review and comment by committee; periodic review of final rule.

(1) Prior to submitting proposed permanent rules for adoption, amendment, revision or revocation pursuant to the Mississippi Administrative Procedures Law, the agency shall comply with Section 25-43-3.105(2)(d) in order to determine whether the proposed rules affect small business by preparing an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the proposed regulation;

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) A statement of the probable effect on impacted small businesses;

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, including the following regulatory flexibility analysis:

(i) The establishment of less stringent compliance or reporting requirements for small businesses;

(ii) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(iii) The consolidation or simplification of compliance or reporting requirements for small businesses;

(iv) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(v) The exemption of some or all small businesses from all or any part of the requirements contained in the proposed regulations.

(2) If the economic impact statement reflects that a proposed rule may have an economic effect upon small business, the agency shall submit a copy of the proposed rules and the economic impact statement to the committee for its review and comment pursuant to the review and comment provisions of the Mississippi Administrative Procedures Law. During the committee review process, the director or the director's designee of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(3) Within the review and comment period, if the committee determines that the proposed rules may have an economic effect upon small business, the committee may submit to the agency its comments concerning the proposed regulation including its specific recommendations.

(4) A small business that is affected or aggrieved by final agency action to enforce a rule or regulation is entitled to review of agency compliance with the requirements of this act.

(5) To ensure that any final rule continues to minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes, each agency shall, during any periodic review required by this chapter, consider the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state and local governmental law or rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(6) If an agency's economic impact statement reflects that a proposed rule will have no economic impact upon a small business, or if an agency fails to file an economic impact statement and the committee otherwise determines that the agency's proposed rule will have an economic impact, then the committee may file its own economic impact statement for the agency's proposed rule with the Secretary of State and notify the appropriate agency that the economic impact statement was filed. When the committee files its economic impact statement, if an agency has not completed the regulatory process that is required for the applicable proposed rule to become final, the committee shall have an additional sixty (60) days from the date of filing its economic impact statement with the Secretary of State to submit its comments concerning the

proposed regulation and any specific recommendations to the agency, for its consideration. During the additional sixty (60) days' committee review process, the director of the promulgating agency, or his or her designee, shall be available at the request of the committee to comment on the proposed regulation.

HISTORY:

Laws, 2012, ch. 454, § 4; reenacted and amended, Laws, 2016, ch. 411, § 4, eff from and after July 1, 2016.

Cross References —

Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

§ 25-43-4.105. Committee opposition to promulgated regulations; agency response.

(1) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has an impact on small business. In addition to distinctly setting forth how the regulation has had an impact on small business, the committee's petition shall address the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other federal, state and local governmental laws or rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule.

The petition may also renew any earlier comments made by the committee when the regulation was first promulgated, as provided by Section 25-43-4.104(3). Furthermore, the committee's petition shall make a specific recommendation concerning the regulation, including, but not limited to, whether the regulation should be amended, revised or revoked.

(2) The agency shall submit a written response of its determination to the committee within sixty (60) days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Mississippi Administrative Procedures Law. If the agency determines that the petition is without merit, the committee may submit within thirty (30) days additional data in support of its petition.

HISTORY:

Laws, 2012, ch. 454, § 5; reenacted without change, Laws, 2016, ch. 411, § 5, eff from and after July 1, 2016.

Cross References —

Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

§ 25-43-4.106. Annual report.

The committee shall make an annual report by January 15 of each year to the Governor, the Lieutenant Governor and the Speaker of the House of Representatives and provide detailed information on the committee's activities during the previous calendar year.

HISTORY:
Laws, 2012, ch. 454, § 6; reenacted without change, Laws, 2016, ch. 411, § 6, eff from and after July 1, 2016.

§ 25-43-4.107. Waiver of or reduction in administrative penalty or fine under certain circumstances.

(1) Notwithstanding any other law of this state, any agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce any administrative penalty or administrative fine for a violation of any statute, ordinance, or rules by a small business under the following conditions:

(a) The small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation;

(b) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule; or

(c) The agency determines that the small business is making a good-faith effort to comply with the statute, ordinance or rule.

(2) Subsection (1) of this section shall not apply when:

(a) A small business fails to exercise good faith in complying with the statute, ordinance or rule;

(b) A violation involves criminal conduct;

(c) A violation results in serious health, safety or environmental impact; or

(d) The penalty or fine is assessed pursuant to a federal law or regulation and for which no waiver or reduction is authorized by the federal law or regulation.

HISTORY:
Laws, 2012, ch. 454, § 7; reenacted without change, Laws, 2016, ch. 411, § 7, eff from and after July 1, 2016.

§ 25-43-4.108. Applicability and relation to other laws.

The Mississippi Small Business Regulatory Flexibility Act shall not apply to proposed permanent rules by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives.

HISTORY:
Laws, 2012, ch. 454, § 8; reenacted without change, Laws, 2016, ch. 411, § 8, eff from and after July 1, 2016.

§ 25-43-4.109. Repealed.

Repealed by Laws of 2016, ch. 411, § 9, effective July 1, 2016.

§ 25-43-4.109. [Laws, 2012, ch. 454, § 9, eff from and after July 1, 2012.]

Editor's Notes —

Former § 25-43-4.109 provided for the repeal of §§ 25-43-4.101 through 25-43-4.109, effective July 1, 2016.

CHAPTER 45.

PERMIT AND LICENSING PROCEDURES

Sec.

25-45-1. Statement of policy.

25-45-3. State agencies to develop plans for one-stop permitting; elements of plan.

25-45-5. Agencies authorized to enter agreements with state or federal agencies.

25-45-7. Agencies to consult with Mississippi Department of Information Technology Services.

25-45-9. Powers, duties and responsibilities of agencies not to be altered.

25-45-11. Repealed.

25-45-13. Legislative intent; coordination and implementation of "one-stop permitting" terms and provisions.

25-45-15. Repealed.

25-45-17. Cooperation of other state agencies.

§ 25-45-1. Statement of policy.

It is the policy of the State of Mississippi that each agency of the state shall cooperate to the greatest extent possible with other agencies of the state and agencies of the federal government which have separate but similar, related or interrelated jurisdiction or authority over certain activities performed by or benefits granted to persons or entities within the state, so that (a) the processing and issuing of permits, licenses and other such instruments will be streamlined to reduce costly delays, (b) duplication of effort and unnecessary governmental "red tape" will be reduced, and (c) state policy will be carried out in an effective, efficient, predictable and consistent manner.

HISTORY:

Laws, 1981, ch. 421, § 1(1); reenacted, Laws, 1984, ch. 418, § 1; reenacted, Laws, 1988, ch. 532, § 1, eff from and after June 30, 1988.

Cross References —

Environmental permit coordinator in department of economic development (now the Mississippi Development Authority), see §§ 25-45-13 et seq.

§ 25-45-3. State agencies to develop plans for one-stop permitting; elements of plan.

In order to accomplish the policy set out in Section 25-45-1, each agency of the state shall develop a plan for "one-stop permitting" to coordinate the processing and issuing of permits, licenses and other such instruments by the agency with other state or federal agencies which also require an applicant to obtain a permit, license or other instrument from it or to supply information to it before the applicant may perform certain activities or receive certain benefits. "One-stop permitting" shall enable an applicant for a permit, license or other instrument from an agency of the state to complete all necessary applications at one (1) time and location or to supply enough information to the agency at one (1) time and location so that such agency can process the application or information through any other state or federal agencies necessary for the applicant to obtain authorization to perform the particular activities that he wants to perform or receive the benefits for which he has applied. To the greatest extent possible, each plan for "one-stop permitting" shall provide for the following:

(a) Where practicable, a single application form for all required permits, licenses and other instruments from agencies which have separate but similar, related or interrelated jurisdiction or authority over certain activities performed by or benefits granted to persons or entities within the state; such application form shall contain sufficient information so that the necessary reviews of all affected agencies can be expeditiously carried out;

(b) Consolidated public hearings so that a single public hearing may serve to meet the requirements of the several public hearings as may now be provided by law for issuing permits, licenses and other such instruments by agencies which have separate but similar, related or interrelated jurisdiction or authority over certain activities performed by or benefits granted to persons or entities within the state;

(c) The shortest practicable review period for applications, proper allowances being made for all interested parties to become informed and to make their opinions heard by the appropriate agencies; and

(d) Joint permitting procedures for state and federal agencies.

HISTORY:

Laws, 1981, ch. 421, § 1(2); reenacted, Laws, 1984, ch. 418, § 2; reenacted and amended, Laws, 1988, ch. 532, § 2, eff from and after June 30, 1988.

Cross References —

Environmental permit coordinator in department of economic development (now the Department of Economic and Community Development), see §§ 25-45-13 et seq.

§ 25-45-5. Agencies authorized to enter agreements with state or federal agencies.

Each agency of the state is authorized to enter into agreements with other state agencies and federal agencies in order to implement the "one-stop permitting" required by this chapter.

HISTORY:

Laws, 1981, ch. 421, § 1(3); reenacted, Laws, 1984, ch. 418, § 3; reenacted, Laws, 1988, ch. 532, § 3, eff from and after June 30, 1988.

Cross References —

Environmental permit coordinator in department of economic development (now the Department of Economic and Community Development), see §§ 25-45-13 et seq.

§ 25-45-7. Agencies to consult with Mississippi Department of Information Technology Services.

Each agency of the state may consult with the Central Data Processing Authority created under the provisions of Section 25-53-1 et seq. in all instances where the Central Data Processing Authority may be of assistance in developing and/or implementing a plan or program for "one-stop permitting."

HISTORY:

Laws, 1981, ch. 421, § 1(4); reenacted, Laws, 1984, ch 418, § 4; reenacted and amended, Laws, 1988, ch. 532, § 4, eff from and after June 30, 1988.

Editor's Notes —

Section 2 of Chapter 622, Laws of 1995 (§ 25-53-3) changed the name of the "Central Data Processing Authority " (CDPA) to the "Mississippi Department of Information Technology Services" (MDITS) and provided that wherever the terms "Central Data Processing Authority" and "authority", when referring to the Central Data Processing Authority, are used in any law, the same shall mean the Mississippi Department of Information Technology Services.

Cross References —

Environmental permit coordinator in department of economic development (now the Mississippi Development Authority), see §§ 25-45-13 et seq.

§ 25-45-9. Powers, duties and responsibilities of agencies not to be altered.

It is the intent of the Legislature that "one-stop permitting" shall expedite the decision-making of all agencies having separate but similar, related or interrelated jurisdiction or authority over certain activities performed by or benefits granted to persons within the state without impinging on the jurisdiction or authority of these agencies. The "one-stop permitting" required by this chapter shall not alter the powers, duties and responsibilities of any agency, its expressed purpose being to improve the procedural operations of these agencies.

HISTORY:

Laws, 1981, ch. 421, § 1(5); reenacted, Laws, 1984, ch. 418, § 5; reenacted, Laws, 1988, ch. 532, § 5, eff from and after June 30, 1988.

Cross References —

Environmental permit coordinator in department of economic development (now the Mississippi Development Authority), see §§ 25-45-13 et seq.

§ 25-45-11. Repealed.

Repealed by Laws, 1988, ch. 532, § 8, eff from and after June 30, 1988. [En Laws, 1981, ch. 421, § 2; reenacted, 1984 ch. 418, § 6]

Editor's Notes —

Former section 25-45-11 directed the Research and Development Center to develop a single application form for all required permits, licenses and other instruments used by state agencies.

§ 25-45-13. Legislative intent; coordination and implementation of "one-stop permitting" terms and provisions.

(1) It is the intent of the Legislature by Sections 25-45-13 through 25-45-17 to make permitting more effective in order to improve economic development within the State of Mississippi. In accordance with this intent, the Mississippi Department of Economic Development shall coordinate and implement the terms and provisions of Sections 25-45-1 through 25-45-9, which provide for "one-stop permitting," and serve as liaison between all agencies of the state affected by those sections in order to implement same, through the functions outlined as follows:

(a) Participating in the initial permit contact with industry;

(b) Providing general permit information;

(c) Arranging meetings with pertinent regulatory agencies;

(d) Acting as industry's advocate in obtaining environmental permits; and

(e) Considering various data bases and other relevant planning information to assist the industrial prospect in the location and permitting process.

(2) A Department of Economic Development representative shall:

(a) Attend all meetings of the permit board created by Section 49-17-28 and all permit considerations by agencies of the State of Mississippi; and

(b) Prepare reports as needed, including incidences of unusual delays in permit issuance, and make recommendations from time to time for improvement of the permit issuance process.

(3) The Department of Economic Development shall prepare and publish:

(a) A directory or inventory of business and industry permits;

(b) A guide to required environmental permits in Mississippi; and

(c) A master permit information form.

HISTORY:
Laws, 1982, ch. 379, §§ 1 (1st ¶), 2; brought forward without change, Laws, 1984, ch 418, § 7; reenacted and amended, Laws, 1988, ch. 532, § 6, eff from and after June 30, 1988.

Editor's Notes —
Section 57-1-54 provides that where the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Mississippi Development Authority.

§ 25-45-15. Repealed.

Repealed by Laws, 1988 ch. 532, § 8, eff from and after June 30, 1988.

[En Laws, 1982, ch. 379, §§ 1 (1st ¶), 2; Brought forward without change, 1984, ch. 418, § 7]

Editor's Notes —
Former section 25-45-15 provided for the appointment of an environmental permit coordinator.

§ 25-45-17. Cooperation of other state agencies.

Each agency within the state shall cooperate to the greatest extent possible with other state agencies and the Department of Economic Development in carrying out the terms, provisions and intent of Sections 25-45-13 through 25-45-17.

HISTORY:
Laws, 1982, ch. 379, § 3; brought forward without change, Laws, 1984, ch. 418, § 9; reenacted and amended, Laws, 1988, ch. 532, § 7, eff from and after June 30, 1988.

Editor's Notes —
Section 57-1-54 provides that where the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Mississippi Development Authority.

CHAPTER 51.

STATE DEPOSITORY FOR PUBLIC DOCUMENTS

Sec.	
25-51-1.	Designation of Mississippi Library Commission as state depository for public records; electronic form of publications as public record.
25-51-3.	Agencies to furnish documents in electronic form for publication on commission website.
25-51-5.	Annual lists of public documents.
25-51-7.	Recorder of public documents.

§ 25-51-1. Designation of Mississippi Library Commission as state depository for public records; electronic form of publications as public record.

The Mississippi Library Commission, hereinafter referred to as the "commission," shall be the state depository for the public records issued by any government agency for public distribution, including the annual report required under Section 27-101-1. Each agency publication shall be made available in an electronic form, and the electronic form shall constitute the public record. The record shall be placed on the official website of the commission. The libraries of state agencies, public junior colleges, colleges, public universities and public libraries located in the state may also become depositories of state agency publications that are available on the commission's official website, when designated as such by the director of the commission upon the written request of the applicable government agency.

HISTORY:

Codes, 1942, § 4228-21; Laws, 1966. ch. 555, § 1; Laws, 1975, ch. 347, § 1; Laws, 2012, ch. 429, § 4, eff from and after July 1, 2012.

Cross References —

State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

Bureau of vital statistics, see §§ 41-57-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 25-51-1, a document issued for public distribution is a document created by a state agency for the general public, as opposed to internal memos, attorney work product, or records created in the course of business. 1995 Miss. Op. Att'y Gen. 686.

The Commission has authority to distribute state agency publications to college libraries which are not publicly supported pursuant to Section 25-51-1. 1995 Miss. Op. Att'y Gen. 686.

RESEARCH REFERENCES

Am. Jur.

2 Am. Jur. Trials, Locating Public Records, § 54.

§ 25-51-3. Agencies to furnish documents in electronic form for publication on commission website.

Each agency of state government shall furnish to the director of the commission the necessary information to provide its publications and public records in an electronic form for placement on the official website of the commission. The director of the commission shall transmit this information to each depository. These records shall be made accessible by the depository receiving them to any person desiring to examine the same.

HISTORY:

Codes, 1942, § 4228-22; Laws, 1966, ch. 555, § 2; Laws, 1975, ch. 347, § 2; Laws, 2012, ch. 429, § 5, eff from and after July 1, 2012.

Cross References —

State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 25-51-5. Annual lists of public documents.

Each agency of state government shall furnish annually to the director of the commission a list of all its publications made available for public distribution.

HISTORY:

Codes, 1942, § 4228-23; Laws, 1966, ch. 555, § 3; Laws, 1975, ch. 347, § 3; Laws, 2012, ch. 429, § 6, eff from and after July 1, 2012.

OPINIONS OF THE ATTORNEY GENERAL

Public community colleges and universities are not considered to be state agencies for purposes of Section 25-51-5. 1995 Miss. Op. Att'y Gen. 686.

§ 25-51-7. Recorder of public documents.

A recorder of documents shall be appointed by the director of the commission in his office, whose functions shall be to administer the provisions of Sections 25-51-1 through 25-51-5, under the supervision of the director of the commission.

HISTORY:

Codes, 1942, § 4228-24; Laws, 1966, ch. 555, § 4; Laws, 1975, ch. 347, § 4; Laws, 2012, ch. 429, § 7, eff from and after July 1, 2012.

CHAPTER 53.

MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES (MDITS)

General Provisions. 25-53-1
Information Confidentiality Officers. 25-53-51
Acquisition, Operation and Maintenance of Telecommunication Systems. 25-53-101
Electronic Government Services. 25-53-151
Wireless Communication Commission. 25-53-171
Wireless Communication Devices Assigned or Issued to State Employees. 25-53-191
Enterprise Security Program. 25-53-201

GENERAL PROVISIONS

Sec.	
25-53-1.	Establishment of department; declaration of purposes [Last paragraph repealed effective July 1, 2019].
25-53-3.	Definitions.
25-53-5.	Powers, duties and responsibilities; funding of agency expenses. [Subparagraph (a)(ii) repealed effective July 1, 2019].
25-53-7.	Members of authority; terms; vacancies; surety bond; restriction on beneficial interest in business or body engaged in information business; legislative designees authorized to attend meetings.
25-53-9.	Compensation and expense allowances.
25-53-11.	Meetings and organization.
25-53-13.	Quorum.
25-53-15.	Votes.
25-53-17.	Minutes and records.
25-53-19.	Executive director; employees.
25-53-21.	Executive director; duties, responsibilities and authority.
25-53-23.	Appeals to authority from decisions of executive director.
25-53-25.	Exemptions; delegation of bidding and contracting responsibilities to purchasing agency; relation to Public Purchases Law.
25-53-27.	Repealed.
25-53-29.	Powers and responsibilities of authority; funding of agency expenses.

§ 25-53-1. Establishment of department; declaration of purposes [Last paragraph repealed effective July 1, 2019].

The Legislature recognizes that in order for the State of Mississippi to receive the maximum use and benefit from information technology and services now in operation or which will in the future be placed in operation, there should be full cooperation and cohesive planning and effort by and between the several state agencies and that it is the responsibility of the the Legislature to provide statutory authority therefor. The Legislature, therefore, declares and determines that for these and other related purposes there is hereby established an agency of state government to be known as the Mississippi Department of Information Technology Services (MDITS). The Legislature further declares that the Mississippi Department of Information Technology Services (MDITS) shall provide statewide services that facilitate cost-effective information processing and telecommunication solutions. State agencies shall work in full cooperation with the board of MDITS to identify opportunities to minimize duplication, reduce costs and improve the efficiency of providing common technology services across agency boundaries. The provisions of this chapter shall not apply to the Department of Human Services for a period of three (3) years beginning July 1, 2016. The provisions of this chapter shall not apply to the Department of Child Protection Services for a period of three (3) years beginning July 1, 2016.

Notwithstanding the exemption of the Department of Human Services and the Department of Child Protection Services from the provisions of this section, before the Department of Human Services or the Department of Child Protection Services may take an action that would otherwise be subject to the provisions of this section, the department(s) shall give notice of the proposed action to the MDITS for any recommendations by the MDITS. Upon receipt of the notice, the MDITS shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the MDITS does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may take the proposed action. If the MDITS responds to the department(s) within seven (7) calendar days, then the MDITS has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may take the proposed action. The MDITS is not authorized to disapprove any proposed actions that would otherwise be subject to the provisions of this section. This paragraph shall stand repealed on July 1, 2019.

HISTORY:

Codes, 1942, § 8946-61; Laws, 1968, ch. 499, § 1; Laws, 1970, ch. 466, § 1; Laws, 1995, ch. 622, § 1; Laws, 2012, ch. 498, § 1; Laws, 2016, ch. 494, § 6, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 494, § 8 provides:

"SECTION 8. Section 1 of this act [codified as Section 43-26-1] shall take effect and be in force from and after its passage [May 13, 2016], and Sections 2 through 7 of this act [amending Sections 43-15-111, 25-3-39, 25-9-120, 25-9-127, 25-53-1, and 25-53-5, respectively] shall take effect and be in force from and after July 1, 2016."

Laws of 2017, ch. 315, §§ 1 through 5, effective July 1, 2017, and repealed effective December 2, 2018, provide:

"SECTION 1. The Legislature finds:

"(a) That the public expects programs of state government to be managed effectively and efficiently,

"(b) That the accomplishment of these ends requires that lawmakers and managers make data-driven decisions,

"(c) That the quality of any data-driven decisions will be impacted by the quality, utility, and accessibility of the data that is maintained and analyzed by state government entities, and

"(d) That the volume of state government data in unstructured formats is rising dramatically due to the use of new technologies.

"SECTION 2. (1) To assist in achieving the ends of effective and efficient management, there is created the Mississippi Database Management Working Group. This working group shall be composed of the following nine (9) members:

"(a) The Executive Director of the Mississippi Department of Information Technology Services, or his or her designee;

"(b) The Executive Director of the Mississippi Department of Finance and Administration, or his or her designee;

"(c) The Executive Director of the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER), or his or her designee;

"(d) The Executive Director of the Legislative Budget Office, or his or her designee;

"(e) The Mississippi State Health Officer, or his or her designee;

"(f) The Executive Director of the Mississippi Division of Medicaid, or his or her designee;

"(g) The Commissioner of Higher Education, or his or her designee;

"(h) The Executive Director of the Mississippi Administrative Office of the Courts, or his or her designee; and "(i) The Commissioner of Revenue, or his or her designee.

"(2) The Executive Director of the Department of Information Technology Services, or his or her designee shall call the first meeting of the Mississippi Data Management Working Group which shall organize within thirty (30) days of the effective date of this act. At its first meeting, the working group shall elect a chairperson and vice chairperson from its membership. The group shall develop a plan for completing the working group's activities and responsibilities. The elected chairperson may create committees and appoint members of the working group to serve on each committee as he or she deems necessary to complete the responsibilities of the working group.

"(3) All working group members shall serve without compensation, however, members shall be entitled to receive reimbursement for any official travel as provided for in Section 25-3-41. The working group shall have the authority to establish any policies and procedures it determines are necessary and proper for the completion of its responsibilities.

"(4) All agencies of the executive branch and agencies and committees of the legislative and judicial branches shall cooperate with the working group in carrying out its responsibilities as provided for in this act.

"SECTION 3. (1) The Mississippi Data Management Working Group shall research and report on issues related to the quality, utility and accessibility of data maintained by all agencies, boards, commissions, departments and committees of the executive, legislative, and judicial branches of Mississippi state government. Based on its research the working group shall determine and ascertain, the following:

"(a) The identity of any and all financial and nonfinancial databases that such entities maintain;

"(b) The degree to which those databases are kept current, as well as any standards each entity has developed for ensuring that data is maintained and updated in a timely and accurate manner;

"(c) The existence of policies regarding the retention and archiving of past years' database files;

"(d) Any standards for uniformity of database architecture;

"(e) The transparency and Internet accessibility of such databases that are established for public access and use;

"(f) The degree of Internet accessibility and any hindrances to the accessibility of such databases by agencies and committees charged with the responsibility for assessing agency and program effectiveness and efficiency;

"(g) The general volume, source and format of unstructured data not currently found in databases;

"(h) Any legal requirements under state and federal law that impact access and use of confidential or otherwise legally protected information;

"(i) The existence of one or more data dictionaries for any and all databases;

"(j) The existence of any audit procedures implemented by such entities to ensure reliability of data;

"(k) Issues related to the public ownership of the databases of such entities;

"(*l*) Issues related to security of such databases;

"(m) Costs of maintaining databases;

"(n) Any other matter that the working group considers merited to study and comment.

"(2) All files and records of the working group shall, upon completion of the report required by Section 3 of this act, become work files of the PEER Committee.

"SECTION 4. (1) Not later than December 1, 2018, the Mississippi Data Management Working Group shall prepare and present a report to the Speaker of the Mississippi House of Representatives, the Lieutenant Governor of the State of Mississippi, the Governor of the State of Mississippi and the Chairs of the Appropriations Committees in the Mississippi House of Representatives and the Mississippi Senate. The final report shall be available for public viewing on the website of the Mississippi Department of Information Technology Services. The report shall contain the following issues:

"(a) Findings or conclusions regarding the quality, accessibility and utility of the databases of state government;

"(b) Findings or conclusions regarding the volume, source, format and expected growth of unstructured data of the state government;

"(c) Specific conclusions found regarding the issues described in Section 3 of this act; and

"(d) Any other issue related to managing data as a strategic asset that merits reporting as determined by the Mississippi Data Management Working Group.

"(2) The report required under the provisions of this Section 4 shall also contain draft legislation that addresses the concerns stated in the report. Upon presenting the report, all files, research and records gathered by the Mississippi Data Management Working Group shall become work files of the PEER Committee.

"SECTION 5. Sections 1 through 5 of this act shall stand repealed on December 2, 2018."

Cross References —

Assistance of the central data processing authority in developing plan for one stop permitting, see § 25-45-7.

Inapplicability of purchasing regulations approved by public procurement review board to computer equipment acquired pursuant to sections 25-53-1 through 25-53-29, see § 27-104-7.

Operation of statewide motor vehicle title registration system with support of the central data processing authority, see § 63-21-18.

RESEARCH REFERENCES

Am. Jur.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

§ 25-53-3. Definitions.

(1) Whenever the term "Central Data Processing Authority" or the term "authority," when referring to the Central Data Processing Authority, is used in any law, rule, regulation, document or elsewhere, it shall be construed to mean the Mississippi Department of Information Technology Services.

(2) For the purposes of this chapter the following terms shall have the meanings ascribed in this section unless the context otherwise requires:

(a) "Central Data Processing Authority" and "CDPA" mean "Mississippi Department of Information Technology Services (MDITS)" and the term "authority" means "board of the MDITS."

(b) "Bureau of Systems Policy and Planning," "Bureau of Telecommunications," "Bureau of Central Data Processing" and "bureau" mean "Mississippi Department of Information Technology Services."

(c) "Computer equipment or services" means any information technology, computer or computer related telecommunications equipment, electronic word processing and office systems, or services utilized in connection therewith, including, but not limited to, all phases of computer software and consulting services, and insurance on all state-owned computer equipment.

(d) "Acquisition" of computer or telecommunications equipment or services means the purchase, lease, rental, or acquisition in any other manner of any such computer or telecommunications equipment or services.

(e) "Agency" means and includes all the various state agencies, officers, departments, boards, commissions, offices and institutions of the state.

(f) "Governing authority" means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, commissioners and boards of trustees of any public hospitals and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof.

(g) "Bid" means any of the valid source selection techniques and competitive procurement methods appropriate to information technology procurement in the public sector, including, but not limited to, competitive sealed bidding, competitive sealed proposals, simplified small purchase procedures, sole source procurements, and emergency procurements.

(h) "Telecommunications transmission facility" means any transmission medium, switch, instrument, inside wiring system or other facility which is used, in whole or part, to provide any transmission.

(i) "Equipment support contract" means a contract which covers a single, specific class or classes of telecommunications equipment or service and all features associated with that class, through which state agencies may purchase or lease the item of equipment or service specified by issuing a purchase order under the terms of the contract without the necessity of further competitive bidding.

(j) "Inside wiring system" means any wiring which:

(i) Directly or indirectly, interconnects any terminal equipment with any other terminal equipment or with any regulated facility or common carrier services; and

(ii) Is located at the premises of the customer and is not inside any terminal equipment.

(k) "Procurement" means the selling, buying, purchasing, renting, leasing or otherwise obtaining telecommunications equipment, system or related services, as well as activities engaged in, resulting in or expected to result in selling, buying, purchasing, renting, leasing or otherwise obtaining telecommunications equipment.

(*l*) "Telecommunications equipment, systems, related services" are limited to the equipment and means to provide:

(i) Telecommunications transmission facilities.

(ii) Telephone systems, including voice processing systems.

(iii) Facsimile systems.

(iv) Radio paging services.

(v) Mobile telephone services, including cellular mobile telephone service.

(vi) Intercom and paging systems.

(vii) Video teleconferencing systems.

(viii) Personal communications networks and services.

(ix) Any and all systems based on emerging and future telecommunications technologies relative to (i) through (viii) above.

(m) "Telecommunications system lease contract" means a contract between a supplier of telecommunications systems, including equipment and related services, and the Mississippi Department of Information Technology Services through which telecommunications systems, including equipment and related services, may be leased for a term which shall not exceed sixty (60) months for a system lease valued less than One Million Dollars ($1,000,000.00) and shall not exceed one hundred twenty (120) months for a system lease valued One Million Dollars ($1,000,000.00) or more.

(n) "Tariffed or regulated service" means telecommunications service offered by common carriers and subject to control by the Mississippi Public Service Commission or the Federal Communications Commission.

(o) "State Data Center" means one or more facilities operated by the Mississippi Department of Information Technology Services to provide information technology resources requiring enterprise computing resources or any other centrally managed information resources.

HISTORY:
Codes, 1942, § 8946-61; Laws, 1968, ch. 499, § 1; Laws, 1970, ch. 466, § 1; Laws, 1972, ch. 481, § 1; Laws, 1980, ch. 457; Laws, 1995, ch. 622, § 2; Laws, 1999, ch. 410, § 1; Laws, 2012, ch. 498, § 2, eff from and after July 1, 2012.

OPINIONS OF THE ATTORNEY GENERAL

Community and junior colleges, not being agencies of the state, do not fall under the purview of the Department of Information Technology Services for the acquisition of information technology equipment and services. 2001 Miss. Op. Att'y Gen. 139.

RESEARCH REFERENCES

Am. Jur.
41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

§ 25-53-5. Powers, duties and responsibilities; funding of agency expenses. [Subparagraph (a)(ii) repealed effective July 1, 2019].

The authority shall have the following powers, duties, and responsibilities:

(a)(i) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and provide for their implementation. In so doing, the authority may use the MDITS' staff, at the discretion of the executive director of the authority, or the authority may contract for the services of qualified consulting firms in the field of information technology and utilize the service of such consultants as may be necessary for such purposes. Pursuant to Section 25-53-1, the provisions of this section shall not apply to the Department of Human Services for a period of three (3) years beginning on July 1, 2016. Pursuant to Section 25-53-1, the provisions of this section shall not apply to the Department of Child Protection Services for a period of three (3) years beginning July 1, 2016.

(ii) Notwithstanding the exemption of the Department of Human Services and the Department of Child Protection Services from the provisions of this section, before the Department of Human Services or the Department of Child Protection Services may take an action that would otherwise be subject to the provisions of this section, the department(s) shall give notice of the proposed action to the MDITS for any recommendations by the MDITS. Upon receipt of the notice, the MDITS shall post the notice on its website and on the procurement portal website established by Sections 25-53-151 and 27-104-165. If the MDITS does not respond to the department(s) within seven (7) calendar days after receiving the notice, the department(s) may take the proposed action. If the MDITS responds to the department(s) within seven (7) calendar days, then the MDITS has seven (7) calendar days from the date of its initial response to provide any additional recommendations. After the end of the second seven-day period, the department(s) may take the proposed action. The MDITS is not authorized to disapprove any proposed actions that would otherwise be subject to the provisions of this section. This subparagraph (ii) shall stand repealed on July 1, 2019.

(b) The authority shall immediately institute procedures for carrying out the purposes of this chapter and supervise the efficient execution of the powers and duties of the office of executive director of the authority. In the execution of its functions under this chapter, the authority shall maintain as a paramount consideration the successful internal organization and operation of the several agencies so that efficiency existing therein shall not be adversely affected or impaired. In executing its functions in relation to the institutions of higher learning and junior colleges in the state, the authority shall take into consideration the special needs of such institutions in relation to the fields of teaching and scientific research.

(c) Title of whatever nature of all computer equipment now vested in any agency of the State of Mississippi is hereby vested in the authority, and no such equipment shall be disposed of in any manner except in accordance with the direction of the authority or under the provisions of such rules and regulations as may hereafter be adopted by the authority in relation thereto.

(d) The authority shall adopt rules, regulations, and procedures governing the acquisition of computer and telecommunications equipment and services which shall, to the fullest extent practicable, insure the maximum of competition between all manufacturers of supplies or equipment or services. In the writing of specifications, in the making of contracts relating to the acquisition of such equipment and services, and in the performance of its other duties the authority shall provide for the maximum compatibility of all information systems hereafter installed or utilized by all state agencies and may require the use of common computer languages where necessary to accomplish the purposes of this chapter. The authority may establish by regulation and charge reasonable fees on a nondiscriminatory basis for the furnishing to bidders of copies of bid specifications and other documents issued by the authority.

(e) The authority shall adopt rules and regulations governing the sharing with, or the sale or lease of information technology services to any nonstate agency or person. Such regulations shall provide that any such sharing, sale or lease shall be restricted in that same shall be accomplished only where such services are not readily available otherwise within the state, and then only at a charge to the user not less than the prevailing rate of charge for similar services by private enterprise within this state.

(f) The authority may, in its discretion, establish a special technical advisory committee or committees to study and make recommendations on technology matters within the competence of the authority as the authority may see fit. Persons serving on the Information Resource Council, its task forces, or any such technical advisory committees shall be entitled to receive their actual and necessary expenses actually incurred in the performance of such duties, together with mileage as provided by law for state employees, provided the same has been authorized by a resolution duly adopted by the authority and entered on its minutes prior to the performance of such duties.

(g) The authority may provide for the development and require the adoption of standardized computer programs and may provide for the dissemination of information to and the establishment of training programs for the personnel of the various information technology centers of state agencies and personnel of the agencies utilizing the services thereof.

(h) The authority shall adopt reasonable rules and regulations requiring the reporting to the authority through the office of executive director of such information as may be required for carrying out the purposes of this chapter and may also establish such reasonable procedures to be followed in the presentation of bills for payment under the terms of all contracts for the acquisition of computer equipment and services now or hereafter in force as may be required by the authority or by the executive director in the execution of their powers and duties.

(i) The authority shall require such adequate documentation of information technology procedures utilized by the various state agencies and may require the establishment of such organizational structures within state agencies relating to information technology operations as may be necessary to effectuate the purposes of this chapter.

(j) The authority may adopt such further reasonable rules and regulations as may be necessary to fully implement the purposes of this chapter. All rules and regulations adopted by the authority shall be published and disseminated in readily accessible form to all affected state agencies, and to all current suppliers of computer equipment and services to the state, and to all prospective suppliers requesting the same. Such rules and regulations shall be kept current, be periodically revised, and copies thereof shall be available at all times for inspection by the public at reasonable hours in the offices of the authority. Whenever possible no rule, regulation or any proposed amendment to such rules and regulations shall be finally adopted or enforced until copies of the proposed rules and regulations have been furnished to all interested parties for their comment and suggestions.

(k) The authority shall establish rules and regulations which shall provide for the submission of all contracts proposed to be executed by the executive director for computer equipment or services to the authority for approval before final execution, and the authority may provide that such contracts involving the expenditure of less than such specified amount as may be established by the authority may be finally executed by the executive director without first obtaining such approval by the authority.

(*l*) The authority is authorized to purchase, lease, or rent computer equipment or services and to operate that equipment and use those services in providing services to one or more state agencies when in its opinion such operation will provide maximum efficiency and economy in the functions of any such agency or agencies.

(m) Upon the request of the governing body of a political subdivision or instrumentality, the authority shall assist the political subdivision or instrumentality in its development of plans for the efficient acquisition and utilization of computer equipment and services. An appropriate fee shall be charged the political subdivision by the authority for such assistance.

(n) The authority shall adopt rules and regulations governing the protest procedures to be followed by any actual or prospective bidder, offerer or contractor who is aggrieved in connection with the solicitation or award of a contract for the acquisition of computer equipment or services. Such rules and regulations shall prescribe the manner, time and procedure for making protests and may provide that a protest not timely filed shall be summarily denied. The authority may require the protesting party, at the time of filing the protest, to post a bond, payable to the state, in an amount that the authority determines sufficient to cover any expense or loss incurred by the state, the authority or any state agency as a result of the protest if the protest subsequently is determined by a court of competent jurisdiction to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious; however, in no event may the amount of the bond required exceed a reasonable estimate of the total project cost. The authority, in its discretion, also may prohibit any prospective bidder, offerer or contractor who is a party to any litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the litigation.

(o) The authority shall make a report in writing to the Legislature each year in the month of January. Such report shall contain a full and detailed account of the work of the authority for the preceding year as specified in Section 25-53-29(3).

All acquisitions of computer equipment and services involving the expenditure of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature.

(s) The authority shall work closely with the council to bring about effective coordination of policies, standards and procedures relating to procurement of remote sensing and geographic information systems (GIS) resources. In addition, the authority is responsible for development, operation and maintenance of a delivery system infrastructure for geographic information systems data. The authority shall provide a warehouse for Mississippi's geographic information systems data.

(t) The authority shall manage one or more State Data Centers to provide information technology services on a cost-sharing basis. In determining the appropriate services to be provided through the State Data Center, the authority should consider those services that:

(i) Result in savings to the state as a whole;

(ii) Improve and enhance the security and reliability of the state's information and business systems; and

(iii) Optimize the efficient use of the state's information technology assets, including, but not limited to, promoting partnerships with the state institutions of higher learning and community colleges to capitalize on advanced information technology resources.

(u) The authority shall increase federal participation in the cost of the State Data Center to the extent provided by law and its shared technology infrastructure through providing such shared services to agencies that receive federal funds. With regard to state institutions of higher learning and community colleges, the authority may provide shared services when mutually agreeable, following a determination by both the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, that the sharing of services is mutually beneficial.

(v) The authority, in its discretion, may require new or replacement agency business applications to be hosted at the State Data Center. With regard to state institutions of higher learning and community colleges, the authority and the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, as the case may be, may agree that institutions of higher learning or community colleges may utilize business applications that are hosted at the State Data Center, following a determination by both the authority and the applicable board that the hosting of those applications is mutually beneficial. In addition, the authority may establish partnerships to capitalize on the advanced technology resources of the Board of Trustees of State Institutions of Higher Learning or the Mississippi Community College Board, following a determination by both the authority and the applicable board that such a partnership is mutually beneficial.

(w) The authority shall provide a periodic update regarding reform-based information technology initiatives to the Chairmen of the House and Senate Accountability, Efficiency and Transparency Committees.

From and after July 1, 2018, the expenses of this agency shall be defrayed by appropriation from the State General Fund. In addition, in order to receive the maximum use and benefit from information technology and services, expenses for the provision of statewide shared services that facilitate cost-effective information processing and telecommunication solutions shall be defrayed by pass-through funding and shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature. These funds shall only be utilized to pay the actual costs incurred by the Mississippi Department of Information Technology Services for providing these shared services to state agencies. Furthermore, state agencies shall work in full cooperation with the Board of the Mississippi Department of Information Technology Services to identify computer equipment or services to minimize duplication, reduce costs, and improve the efficiency of providing common technology services across agency boundaries.

HISTORY:

Codes, 1942, §§ 8946-61, 8946-62; Laws, 1968, ch. 499, §§ 1, 2; Laws, 1970, ch. 466, §§ 1, 2; Laws, 1972, ch. 481, § 1; Laws, 1980, ch. 474; Laws, 1984, ch. 488, § 287; Laws, 1995, ch. 622, § 3; Laws, 1998, ch. 430, § 1; Laws, 1999, ch. 410, § 2; Laws, 2003, ch. 527, § 2; Laws, 2004, ch. 362, § 1; Laws, 2012, ch. 498, § 3; Laws, 2016, ch. 459, § 11; Laws, 2016, ch. 494, § 7, eff from and after July 1, 2016; Laws, 2018, ch. 433, § 3, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 11 of Chapter 459, Laws of 2016, effective from and after July 1, 2016, (approved May 6, 2016), amended this section. Section 7 of Chapter 494, Laws of 2016, effective from and after July 1, 2016 (approved May 13, 2016), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Editor's Notes —

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 2003, ch. 527, § 1, provides that the "council" referred to in (s), is the Mississippi Council for Remote Sensing and Geographic Information Systems.

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Laws of 2016, ch. 494, § 8 provides:

"SECTION 8. Section 1 of this act [codified as Section 43-26-1] shall take effect and be in force from and after its passage [May 13, 2016], and Sections 2 through 7 of this act [amending Sections 43-15-111, 25-3-39, 25-9-120, 25-9-127, 25-53-1, and 25-53-5, respectively] shall take effect and be in force from and after July 1, 2016."

Amendment Notes —

The 2018 amendment deleted the former last two paragraphs of the section, which read: "From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

"From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section"; and added the present last paragraph.

Cross References —

Authority to review acquisitions of computer equipment, services and software of Board of Trustees of the Public Employees' Retirement system, see § 25-11-15.

Selection of executive director and employees of central data processing authority, see § 25-53-19.

Establishment of a bureau of systems policy and planning within the central data processing authority, see § 25-53-29.

Provisions relating to the bureau of systems policy and planning, see § 25-53-29.

Investigations by authority of alleged disclosures of confidential information by information confidentiality officers, see § 25-53-55.

Duties of authority with respect to creation of a geographic information system and preparation of a multipurpose cadastre by counties, see § 25-58-1 et seq.

Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems established, see § 25-58-21.

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Requirement of approval of the state central data processing authority for acquisition of computer equipment or services by the justice information system, see § 45-27-7.

OPINIONS OF THE ATTORNEY GENERAL

If updated software program was truly available from one source only, acquisition by Central Data Processing Authority could be made pursuant to state purchasing law covering sole source acquisitions. 1993 Miss. Op. Att'y Gen. 440.

Based upon Section 25-53-5, that no nonstate agency or person can acquire the use of any information technology services, including Internet access, from any state agency unless (1) such services are not readily available otherwise within the state, and (2) such users pay a charge for the services not less than the prevailing rate of charge for similar services by private enterprise within the state. 1996 Miss. Op. Att'y Gen. 253.

Section 25-53-5 governs the provision of information technology services even in cases where such technology is purchased with wholly federal funds. 1996 Miss. Op. Att'y Gen. 253.

Pursuant to subsection (o), the Mississippi Department of Information Technology Services may utilize the State Contract Price list to acquire equipment, systems, and related services when applicable; however, this would not raise the advertisement for bids threshold to $10,000.00 as provided in the amendment to § 31-7-13 contained in Senate Bill 2193. 1998 Miss. Op. Att'y Gen. 342.

The general purchasing statute, § 31-7-13, applies to purchases by the Department of Finance and Administration and thus, arguably, to Mississippi Department of Information Technology Services (ITS) under subsection (o) of this section, but this general statute must yield to the specific requirements of subsection (n), which sets out the threshold for advertising for bids by ITS. 1998 Miss. Op. Att'y Gen. 342.

Community and junior colleges, not being agencies of the state, do not fall under the purview of the Department of Information Technology Services for the acquisition of information technology equipment and services. 2001 Miss. Op. Att'y Gen. 139.

Without the statutory authority granted specifically to the Department of Finance and Administration, the Department of Information Technology Services (ITS) may not approve cooperative purchasing agreements developed by other government entities for the use of agencies and state institutions in the procurement of information technology products and services under the purview of ITS. 2006 Miss. Op. Att'y Gen. 457.

The Department of Information Technology Services ITS has the authority to adopt reasonable rules, regulations and procedures for the purpose of submitting purchasing agreements and contracts for approval by the Department of Finance and Administration as provided in Section 31-7-13(m)(i) to be utilized by ITS on behalf of agencies and institutions of the state. 2006 Miss. Op. Att'y Gen. 457.

RESEARCH REFERENCES

ALR.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 25-53-7. Members of authority; terms; vacancies; surety bond; restriction on beneficial interest in business or body engaged in information business; legislative designees authorized to attend meetings.

(1) The membership of the authority shall be composed of five (5) members to be appointed by the Governor with the advice and consent of the Senate. The initial terms of the members shall be for one (1), two (2), three (3), four (4) and five (5) years, respectively, and thereafter all terms shall be for five (5) years. Each member may continue to serve for a period not to exceed twelve (12) months after the expiration of his term if his successor is not duly appointed. The initial appointments to the reconstituted authority shall be made no later than June 30, 1984, for terms to begin on July 1, 1984. Vacancies shall be filled in the same manner as original appointments for the unexpired portion of the term vacated. Each member of the authority shall have a minimum of four (4) years' experience in an information technology-related executive position or prior service as a member of the authority.

(2) Each member of the authority shall be required to furnish a surety bond in the minimum amount of Fifty Thousand Dollars ($50,000.00) to be approved by the Secretary of State, conditioned according to law and payable to the State of Mississippi, before entering upon his duties. The premiums on such bonds shall be paid from any funds available to the authority for such purpose.

(3) No member of the authority, nor its executive director, shall, during his term as such member or director, have any substantial beneficial interest in any corporation or other organization engaged in the information technology business either as manufacturer, supplier, lessor, or otherwise. All members and the executive director shall fully disclose in writing any such beneficial interest, and such disclosure shall be entered on the minutes of the authority.

(4) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the authority. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the authority. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the authority. For attending meetings of the authority, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the authority will

be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the authority without prior approval of the proper committee in their respective houses.

HISTORY:
Codes, 1942, §§ 8946-62, 8946-64; Laws, 1968, ch. 499, §§ 2, 4; Laws, 1970, ch. 466, §§ 2, 4; Laws, 1984, ch. 488, §§ 281, 282; Laws, 1995, ch. 622, § 4; Laws, 2011, ch. 518, § 2, eff from and after passage (approved Apr. 26, 2011.).

Cross References —
Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Selection of executive director and employees of central data processing authority, see § 25-53-19.

JUDICIAL DECISIONS

1. In general.
Former Section 57-1-3(4), which regulated the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority, § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12[Repealed], which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss. Const. Art. 1, § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1[Repealed], 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

RESEARCH REFERENCES

Law Reviews.
1983 Mississippi Supreme Court Review: State legislators serving on state executive boards. 54 Miss. L. J. 46, March 1984.

§ 25-53-9. Compensation and expense allowances.

The members of the authority shall be compensated by a per diem as is authorized by Section 25-3-69 for each day spent in actual discharge of their duties, and shall be reimbursed for mileage and actual expenses incurred in the performance of their duties as provided in Section 25-3-41. No authority member may incur per diem, travel, or other expenses unless previously authorized by vote at a meeting of the authority, which action shall be recorded in the official minutes of said meeting.

HISTORY:
Codes, 1942, § 8946-65; Laws, 1968, ch. 499, § 5; Laws, 1970, ch. 466, § 5; Laws, 1980, ch. 560, § 8; Laws, 1984, ch. 488, § 283, eff from and after July 1, 1984.

Cross References —
Uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Mileage and reimbursement of expenses for members of the Mississippi Department of Information Technology Services, see § 25-53-9.

§ 25-53-11. Meetings and organization.

The authority shall meet regularly at a place designated by it once each calendar month and shall meet at such other times as may be set upon call of the chairman or a majority of the members of the authority. At its first meeting, the authority shall organize and elect a chairman and vice-chairman and, as soon as practicable thereafter, the authority shall adopt such rules and regulations, not contrary to the provisions of this chapter and the other laws of the State of Mississippi, as shall be necessary and proper to govern its proceedings. The authority may either elect a secretary from among its membership or delegate the executive director or another employee of the authority as its secretary.

HISTORY:
Codes, 1942, § 8946-67; Laws, 1968, ch. 499, § 7, eff from and after passage (approved August 7, 1968).

§ 25-53-13. Quorum.

In order to have a quorum for a meeting of the authority, at least three (3) members of the authority must be present.

HISTORY:
Codes, 1942, § 8946-63; Laws, 1968, ch. 499, § 3; Laws, 1970, ch. 466, § 3; Laws, 1984, ch. 488, § 284, eff from and after July 1, 1984.

§ 25-53-15. Votes.

Any member of the authority may have his vote on any question before the authority recorded on the minutes thereof at the time of the vote, and a member of the authority who votes against an illegal or unauthorized expenditure of funds may not be held liable therefor.

HISTORY:
Codes, 1942, § 8946-64; Laws, 1968, ch. 499, § 4; Laws, 1970, ch. 466, § 4, eff from and after passage (approved April 6, 1970).

§ 25-53-17. Minutes and records.

The authority shall keep full, complete, and permanent minutes and records of all its proceedings, including the rules and regulations adopted by it, and said minutes shall be signed by the chairman, or vice-chairman, and attested by the secretary.

HISTORY:
Codes, 1942, § 8946-71; Laws, 1968, ch. 499, § 11.

§ 25-53-19. Executive director; employees.

The authority shall select an executive director, with the advice and consent of the Senate, who shall be the administrative officer of the authority and shall perform such duties as are required of him by law and such other duties as may be assigned him by the authority, and who shall receive such compensation as may be fixed by the authority, subject to the approval of the state personnel board. In addition, he shall be entitled to remuneration for his necessary traveling expenses consistent with general law.

The executive director shall be a graduate of an accredited university with a degree in engineering, business administration, electronic communications, information technology or a related field, with at least ten (10) years' experience in information technology, electronic communications, or a related field, of which at least five (5) years shall be in a responsible high level management position with a demonstrated record of management expertise demonstrated through knowledge in the application of information technology and electronic communications. The qualifications for the executive director prescribed herein shall not apply to the executive director serving on June 30, 1984.

The executive director shall have no vote in the decisions of said authority, but shall offer such professional or technical advice and assistance to the authority as may be required of him. Said executive director, in order to qualify for his position, shall be required to make a good and sufficient bond in some surety company qualified and doing business in the State of Mississippi, in the minimum penal sum of Fifty Thousand Dollars ($50,000.00) conditioned upon the faithful performance of his duties as required by law and the directives of the authority. The premium on said bond shall be paid from any funds available to the authority for such purpose. Said executive director may be removed at any time upon a majority vote of the membership of said authority.

The executive director, with the approval of the authority, shall employ such technical, professional, and clerical help as may be authorized by the authority; and the authority, upon the recommendation of the executive director, shall define the duties and fix the compensation of such employees.

HISTORY:

Codes, 1942, § 8946-66; Laws, 1968, ch. 499, § 6; Laws, 1970, ch. 466, § 6; Laws, 1984, ch. 488, § 288; Laws, 1995, ch. 622, § 5, eff from and after July 1, 1995.

§ 25-53-21. Executive director; duties, responsibilities and authority.

The executive director shall have the following duties, responsibilities and authority:

(a) He shall conduct continuing studies of all information technology activities carried out by all agencies of the state and shall develop a long-range plan for the efficient and economical performance of such activities in state government. Such plan shall be submitted to the authority for its approval and, having been approved by the authority, shall be implemented by the executive director and all state agencies. Such plan shall be continuously reviewed and modifications thereof shall be proposed to the authority by the executive director as developments in information technology techniques and changes in the structure, activities, and functions of state government may require.

(b) He shall review the purchasing practices of all state agencies in the area of the purchasing of supplies for information technology and make recommendations to the authority and to the Public Procurement Review Board for the institution of purchasing procedures which will insure the most economical procurement of such supplies commensurate with the efficient operation of all departments and agencies of state government.

(c) He shall see that all reports required of all agencies are promptly and accurately made in accordance with the rules and regulations adopted by the authority. Either in person or through his authorized agents, he shall make such inspections of information technology operations being conducted by any of the agencies of the state as may be necessary for the performance of his duties.

(d) He shall suggest and cause to be brought about cooperation between the several state agencies in order to provide efficiency in information technology operation. He shall, together with the heads of the agencies involved, reduce to writing and execute cooperative plans for the acquisition and operation of information technology equipment, and any such plan so adopted shall be carried out in accordance with the provisions of such plan unless the same shall be amended by the joint action of the executive director and the heads of agencies involved. The executive director shall report to the authority the details of any plan so adopted and all amendments or modifications thereof, and shall otherwise report to the authority and to the Public Procurement Review Board any failure on the part of any agency to carry out the provisions of such plan. In the event the head of any agency involved or the executive director shall propose amendments to a plan so adopted and such amendment is disapproved by the head of another agency involved or the executive director, an appeal may be taken to the authority which may, after full consideration thereof, order the adoption of the proposed amendment or any modification thereof. The executive director shall make decisions on all questions of the division of the cost of information technology operations among the several agencies, but his findings shall be subject to the approval or modification by the authority on appeal to it.

(e) He shall review all contracts for acquisition of computer equipment or services now or hereafter in force and may require the renegotiation, termination, amendment or execution of any such contracts in proper form and in accordance with the policies and rules and regulations and subject to the direction of the authority. In the negotiation and execution of such contracts, the executive director may negotiate a limitation on the liability to the state of prospective contractors provided such limitation affords the state reasonable protection.

(f) He shall act as the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer equipment or services. He shall receive, review, and promptly approve or disapprove all requests of agencies of the state for the acquisition of computer equipment or services, which are submitted in accordance with rules and regulations of the authority. In the event that any such request is disapproved, he shall immediately notify the requesting agency and the members of the authority in writing of such disapproval, stating his reasons therefor. The disapproval of any request by the executive director of the authority may be appealed to the authority or to the Public Procurement Review Board, respectively, in such manner as may be authorized by such reasonable rules and regulations hereby authorized to be adopted by the authority and by the Public Procurement Review Board to govern the same. The executive director shall report the approval of all such requests to the authority in such manner as may be directed by the authority, and shall execute any such contracts only after complying with rules and regulations which may be adopted by the authority in relation thereto. Any contracts for personal or professional services entered into by the executive director shall be exempted from the requirements of Section 25-9-120(3) relating to submission of such contract to the State Personal Service Contract Review Board.

(g) He shall suggest and cause to be brought about cooperation between the several state agencies, departments and institutions in order that work may be done by one agency for another agency, and equipment in one agency may be made available to another agency, and suggest and cause to be brought about such improvements as may be necessary in joint or cooperative information technology operations.

(h) He shall be designated as the "Chief Information Confidentiality Officer" after being duly sworn to the oath of this office by the chairman of the authority and shall be responsible for administering the oath to other qualified officers he may designate.

(i) He shall appoint employees of the Mississippi Department of Information Technology Services, or at his discretion, employees of other state agencies and institutions that are responsible for handling or processing data for any agency or institution other than that for which they are employed, to a position of information custodial care that shall be known as "Information Confidentiality Officer." The selection and swearing of all officers shall be reported to the authority at the next regular meeting and names, affirmation dates and employment dates shall be recorded in the permanent minutes of the authority.

HISTORY:

Codes, 1942, § 8946-69; Laws, 1968, ch. 499, § 9; Laws, 1970, ch. 466, § 7; Laws, 1976, ch. 372, § 1; Laws, 1985, ch. 525, § 10; Laws, 1990, ch. 317, § 1; Laws, 1995, ch. 622, § 6; Laws, 1997, ch. 609, § 5; Laws, 1998, ch. 430, § 2, eff from and after passage (approved March 23, 1998).

Cross References —

Creation and duties of the State Personal Service Contract Review Board, see § 25-9-120.

Information confidentiality officers generally, see §§ 25-53-51 et seq.

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

Exemptions from bidding requirements for purchase of data processing equipment, see § 31-7-13.

OPINIONS OF THE ATTORNEY GENERAL

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. 2004 Miss. Op. Att'y Gen. 340.

§ 25-53-23. Appeals to authority from decisions of executive director.

The authority shall act upon all appeals of decisions made by the executive director thereof and shall, upon such appeals, approve or disapprove such administrative actions as may be taken by him. The form of an appeal to the full authority from an action or recommendation of the executive director thereof shall be a written communication from the executive head of the agency or agencies involved to the chairman of the authority, stating the objection and a request to appear before the full authority to present the case in point, on which appeal the authority shall take such action as is indicated by the facts presented to or made available to the authority.

HISTORY:

Codes, 1942, § 8946-68; Laws, 1968, ch. 499, § 8, eff from and after passage (approved August 7, 1968).

§ 25-53-25. Exemptions; delegation of bidding and contracting responsibilities to purchasing agency; relation to Public Purchases Law.

(1) Nothing in this chapter shall be construed to imply exemption from the public purchases law, being Section 31-7-1 et seq.

(2) The authority may establish policies and procedures for the purpose of delegating the bidding and contracting responsibilities related to the procurement of computer equipment or services to the purchasing agency. Such policies and procedures must address the following issues:

(a) Establish categories of equipment or services affected;

(b) Establish maximum unit and/or ceiling prices of such procurements;

(c) Establish reporting, monitoring and control of such procurements; and

(d) Establish other such rules and regulations as necessary to fully implement the purposes of this section. Nothing in this subsection shall be construed to imply exemption from the public purchases law, being Section 31-7-1 et seq.

(3) Acquisitions of computer equipment and services by institutions of higher learning or junior colleges wholly with federal funds and not with state general funds shall be exempt from the provisions of this chapter; however, nothing in this subsection shall be construed to imply an exemption of such acquisitions from the public purchases law, being Section 31-7-1 et seq.

(4) [Repealed]

HISTORY:

Codes, 1942, § 8946-70; Laws, 1968, ch. 499, § 10; Laws, 1970, ch. 466, § 8; Laws, 1983, ch. 321; Laws, 1986, ch. 446; Laws, 1988 Ex Sess, ch. 14, § 70; Laws, 1994 Ex Sess, ch. 26, § 19; Laws, 2012, ch. 498, § 4, eff from and after July 1, 2012.

Editor's Notes —

Former subsection (4), relating to the exemption of the acquisition of computer equipment and services by the State Prison Emergency Construction and Management Board when exercising its emergency powers to remove two thousand (2,000) inmates from county jails from the provisions of this chapter and certain exceptions, was repealed by its own terms effective from and after July 1, 1996.

OPINIONS OF THE ATTORNEY GENERAL

Community colleges, planning to purchase certain computer equipment entirely with federal funds are involved with programs which are exempt from bidding and contractual provisions of Miss. Code Section 25-53-25(3). 1993 Miss. Op. Att'y Gen. 229.

§ 25-53-27. Repealed.

Repealed by Laws, 1981, ch. 443, § 2, eff from and after June 30, 1984.

[En Laws, 1976, ch. 456, §§ 1, 2; 1977, ch. 400; 1979, ch. 478, § 1; 1981, ch. 443, § 1]

Editor's Notes —

Former Section 25-53-27 contained provisions for issuance of negotiable general obligation bonds or transfer of state funds for purchasing computer equipment.

§ 25-53-29. Powers and responsibilities of authority; funding of agency expenses.

(1) For the purposes of this section the term "bureau" shall mean the "Mississippi Department of Information Technology Services." The authority shall have the following powers and responsibilities to carry out the establishment of policy and provide for long-range planning and consulting:

(a) Provide a high level of technical expertise for agencies, institutions, political subdivisions and other governmental entities as follows: planning; consulting; project management; systems and performance review; system definition; design; application programming; training; development and documentation; implementation; maintenance; and other tasks as may be required, within the resources available to the bureau.

(b) Publish written planning guides, policies and procedures for use by agencies and institutions in planning future electronic information service systems. The bureau may require agencies and institutions to submit data, including periodic electronic equipment inventory listings, information on agency staffing, systems under study, planned applications for the future, and other information needed for the purposes of preparing the state master plan. The bureau may require agencies and institutions to submit any additional data required for purposes of preparing the state master plan.

(c) Inspect agency facilities and equipment, interview agency employees and review records at any time deemed necessary by the bureau for the purpose of identifying cost-effective applications of electronic information technology. Upon conclusion of any inspection, the bureau shall issue a management letter containing cost estimates and recommendations to the agency head and governing board concerning applications identified that would result in staff reductions, other monetary savings and improved delivery of public services.

(d) Conduct classroom and on-site training for end users for applications and systems developed by the bureau.

(e) Provide consulting services to agencies and institutions or Mississippi governmental subdivisions requesting technical assistance in electronic information services technology applications and systems. The bureau may submit proposals and enter into contracts to provide services to agencies and institutions or governmental subdivisions for such purposes.

(2) The bureau shall annually issue a three-year master plan in writing to the Governor, available on request to any member of the Legislature, including recommended statewide strategies and goals for the effective and efficient use of information technology and services in state government. The report shall also include recommended information policy actions and other recommendations for consideration by the Governor and members of the Legislature.

(3) The bureau shall make an annual report in writing to the Governor, available on request to any member of the Legislature, to include a full and detailed account of the work of the authority for the preceding year. The report shall contain recommendations to agencies and institutions resulting from inspections or consulting contracts. The report shall also contain a summary of the master plan, progress made, and legislative and policy recommendations for consideration by the Governor and members of the Legislature.

(4) The bureau may charge fees to agencies and institutions for services rendered to them. The bureau may charge fees to vendors to recover the cost of providing procurement services and the delivery of procurement awards to public bodies. The amounts of such fees shall be set by the authority upon recommendation of the Executive Director of the MDITS, and all such fees collected shall be paid into the fund established for carrying out the purposes of this section.

(5) It is the intention of the Legislature that the employees of the bureau performing services defined by this section be staffed by highly qualified persons possessing technical, consulting and programming expertise. Such employees shall be considered nonstate service employees as defined in Section 25-9-107(c)(x) and may be compensated at a rate comparable to the prevailing rate of individuals in qualified professional consulting firms in the private sector. Such compensation rates shall be determined by the State Personnel Director. The number of such positions shall be set by annual appropriation of the Legislature. Qualifications and compensation of the bureau employees shall be set by the State Personnel Board upon recommendation of the Executive Director of the MDITS. The total number of positions and classification of positions may be increased or decreased during a fiscal year depending upon work load and availability of funds.

(6) The bureau may, from time to time, at the discretion of the Executive Director of the MDITS, contract with firms or qualified individuals to be used to augment the bureau's professional staff in order to assure timely completion and implementation of assigned tasks, provided that funds are available in the fund established for carrying out the purposes of this section. Such individuals may be employees of any agency, bureau or institution provided that these individuals or firms meet the requirements of other individuals or firms doing business with the state through the Mississippi Department of Information Technology Services. Individuals who are employees of an agency or institution may contract with the Mississippi Department of Information Technology

Services only with the concurrence of the agency or institution for whom they are employed.

From and after July 1, 2018, the expenses of this agency shall be defrayed by appropriation from the State General Fund. In addition, in order to receive the maximum use and benefit from information technology and services, expenses for the provision of statewide shared services that facilitate cost-effective information processing and telecommunication solutions shall be defrayed by pass-through funding and shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature. These funds shall only be utilized to pay the actual costs incurred by the Mississippi Department of Information Technology Services for providing these shared services to state agencies. Furthermore, state agencies shall work in full cooperation with the Board of the Mississippi Department of Information Technology Services (MDITS) to identify computer equipment or services to minimize duplication, reduce costs, and improve the efficiency of providing common technology services across agency boundaries.

HISTORY:

Laws, 1984, ch. 488, § 285; Laws, 1985, ch. 525, § 11; Laws, 1995, ch. 622, § 7; Laws, 2013, ch. 430, § 1; Laws, 2016, ch. 459, § 13, eff from and after July 1, 2016; Laws, 2018, ch. 433, § 4, eff from and after July 1, 2018.

Editor's Notes —

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (5) was corrected by substituting "...this section..." for "... Section 25-53-29..."

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment deleted (7) and (8), which read: "(7) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law. (8) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section"; and added the last paragraph.

Cross References —

Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

RESEARCH REFERENCES

Am. Jur.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

INFORMATION CONFIDENTIALITY OFFICERS

Sec.	
25-53-51.	Qualifications for position.
25-53-53.	Handling and processing of information and data.
25-53-55.	Investigation of and hearing on complaints of allegedly improper disclosure of confidential information.
25-53-57.	Officer as legal agent and employee of agency or institution for which he is processing data.

Sec.
25-53-59. Penalty for improper release or divulgence of confidential information.

§ 25-53-51. Qualifications for position.

(1) To qualify for the position of information confidentiality officer a person must:

(a) Be an employee of a state agency or institution in a position such that his duties require him to handle or process or supervise the handling or processing of data in conjunction with the use of automated information technology equipment for an agency or institution other than that for whom he is regularly employed.

(b) Have been continuously employed for a period of at least one hundred eighty (180) days by such agency or institution or have successfully been cleared for employment through an investigation that shall consist of a determination as to good moral character and that the prospective employee has not been convicted of a felony. In order to determine the applicant's suitability for employment at the Mississippi Department of Information Technology Services, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Mississippi Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. A prospective employee may be provisionally employed based on a reference check by the employing agency pending final receipt of the results of a national criminal history record check for a period not to exceed one hundred eighty (180) days.

(c) Successfully complete a suitable instructional course on the subjects of information security, privacy and confidentiality and protection, to be developed and taught under the supervision of the executive director. An employee may work in a provisional capacity under the direct supervision of an information confidentiality officer as part of an on-the-job training program while completing instructional requirements, for a period not to exceed ninety (90) days.

(d) Be duly sworn to the following oath: "I, ____________, do solemnly swear to protect and uphold the confidentiality of all information that may come to my knowledge that is designated as 'confidential information' by another state agency or institution for which I may handle or process in the normal course of my duties. I swear to exercise reasonable care in the handling and processing of all such designated data and further that I will not reveal or otherwise divulge information from such data obtained. I understand that proven violation of this oath will subject me to forfeiture of my bond and dismissal from employment."

(2) In order to maintain appropriate liability insurance necessary to cover damages for any nonmalicious act, the Department of Information Technology Services will work in conjunction with the Tort Claims Board.

(3) In order to clear vendors, such as maintenance personnel, security personnel, cleaning personnel, contractors and other vendors with a valid need to gain access into the State Data Centers and campus, the department shall

determine these individuals have not been convicted of a felony through a fingerprint-based criminal history background check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check.

HISTORY:

Laws, 1976, ch. 372, § 2; Laws, 1999, ch. 410, § 3; Laws, 2016, ch. 403, § 1, eff from and after July 1, 2016.

Cross References —

Appointment of information confidentiality officers, see § 25-53-21.

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

§ 25-53-53. Handling and processing of information and data.

Information and data shall be considered public record information and data and receive normal handling and processing unless designated as "confidential information" by the agency and institution originating the data. Information and data designated as "confidential information" will receive special handling based on procedures agreed to by the executive director and the agency or institution head and shall be handled in accordance with the oath subscribed to by the confidentiality officer.

HISTORY:

Laws, 1976, ch. 372, § 3, eff from and after July 1, 1976.

Cross References —

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

RESEARCH REFERENCES

Am. Jur.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

§ 25-53-55. Investigation of and hearing on complaints of allegedly improper disclosure of confidential information.

Upon written complaint of any person claiming to be adversely affected by disclosure of confidential information by any information confidentiality officer, the director shall give notice to the information confidentiality officer of the fact that such complaint has been filed and shall give such notice to the Chairman of the Mississippi Department of Information Technology Services, who shall call a meeting of the members of the authority for the purpose of hearing such complaint. The authority shall then conduct an investigation into the matter and shall afford to the complaining party and the information confidentiality officer a hearing, of which reasonable notice shall be given. For purposes of such hearing, the authority, under signature of the secretary of the authority attested by the chairman, shall have the power to subpoena witnesses and documentary or other evidence. After such hearing, if the authority, based upon substantial evidence, shall find that the information confidentiality officer has disclosed confidential information in violation of his oath, the authority shall enter such finding of fact on its minutes and the information confidentiality officer shall be immediately discharged from employment. If the authority shall find that such oath has not been violated, it shall, likewise, enter such finding on its minutes and the complaint shall be dismissed. The finding of the authority shall be prima facie evidence of the truth thereof in any judicial procedure seeking forfeiture of the bond of such information confidentiality officer.

HISTORY:

Laws, 1976, ch. 372, § 4; Laws, 1995, ch. 622, § 9, eff from and after July 1, 1995.

Cross References —

General powers and duties of central data processing authority, see § 25-53-5.

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

RESEARCH REFERENCES

ALR.

Propriety of governmental eavesdropping on communications between accused and his attorney. 44 A.L.R.4th 841.

Am. Jur.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

43 Am. Jur. Proof of Facts 2d 449, Invasion of Privacy by Public Disclosure of Private Facts.

§ 25-53-57. Officer as legal agent and employee of agency or institution for which he is processing data.

An information confidentiality officer shall be considered a legal agent of the agency or institution and for the purposes of Sections 25-53-51 through 25-53-59 shall be considered to be an employee of the agency or institution for which he may be processing data at that particular time.

HISTORY:

Laws, 1976, ch. 372, § 5, eff from and after July 1, 1976.

Cross References —

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

§ 25-53-59. Penalty for improper release or divulgence of confidential information.

Any information confidentiality officer who shall intentionally and wilfully violate his oath by releasing or divulging confidential information without proper authority shall be guilty of a misdemeanor and sentenced to not exceeding one (1) year in jail or a fine of not exceeding One Thousand Dollars ($1,000.00), or both.

HISTORY:

Laws, 1976, ch. 372, § 6, eff from and after July 1, 1976.

Cross References —

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ACQUISITION, OPERATION AND MAINTENANCE OF TELECOMMUNICATION SYSTEMS

Sec.	
25-53-101.	Legislative findings and declarations.
25-53-103.	Repealed.
25-53-105.	Administration and purposes of Sections 25-53-109 through 25-53-125.
25-53-107.	Promulgation of rules and regulations; employment of personnel.
25-53-109.	General duties and powers of bureau.
25-53-111.	Additional duties of bureau; justification of requests for increases in expenditures for new telecommunication equipment systems or services; long-range plans for use of telecommunications equipment, systems and services.
25-53-113.	Cooperation with bureau by state agencies.
25-53-115.	Approval by bureau of rentals, leases and purchases of telecommunications systems.
25-53-117.	Creation of state obligations for telecommunications systems; conduct of transactions dealing with telecommunications systems.
25-53-119.	Applicability of Sections 25-53-101 through 25-53-125.
25-53-121.	Equipment support contracts.
25-53-123.	Method of procurement of nonregulated telecommunications systems.
25-53-125.	General provisions applicable to all procurements under Sections 25-53-101 through 25-53-125.

§ 25-53-101. Legislative findings and declarations.

The Legislature hereby declares it essential to the creation and maintenance of an efficient, modern, economically feasible, telecommunications system that there should be full cooperation and cohesive planning and effort by and between the several state agencies and that it is the responsibility of the said Legislature to provide statutory authority therefor. The Legislature, therefore, declares and determines that the responsibility for these and other related purposes shall be vested in the Mississippi Department of Information Technology Services.

HISTORY:

Laws, 1995, ch. 622, § 10, eff from and after July 1, 1995.

§ 25-53-103. Repealed.

Repealed by Laws, 1999, ch. 410, § 5, eff from and after March 17, 1999. [Laws, 1995, ch. 622, § 11, eff from and after July 1, 1995]

Editor's Notes —

Former § 25-53-103 prescribed definitions for certain terms used in the sections of law that place responsibility for acquisition, operation and maintenance of telecommunication systems in the Mississippi Department of Information Technology Services.

§ 25-53-105. Administration and purposes of Sections 25-53-109 through 25-53-125.

The Mississippi Department of Information Technology Services shall administer the provisions of Sections 25-53-109 through 25-53-125. The purposes and aims of the Mississippi Department of Information Technology Services in carrying out said provisions shall be to coordinate and promote efficiency in the acquisition, operation and maintenance of all telecommunications systems and networks being used by agencies of the state and further to coordinate the compatibility of systems and networks to the state with those of governing authorities so as to promote a uniform, compatible telecommunications system for agencies and governing authorities.

HISTORY:
Laws, 1995, ch. 622, § 12, eff from and after July 1, 1995.

§ 25-53-107. Promulgation of rules and regulations; employment of personnel.

(1) The Mississippi Department of Information Technology Services shall promulgate rules and regulations governing the manner in which the authority and duties prescribed by Sections 25-53-101 through 25-53-125 shall be carried out. It shall employ competent personnel necessary to carry out its purposes, under rules promulgated by the State Personnel Board.

(2) The bureau, during a fiscal year, may utilize time-limited escalated positions in order to implement telecommunications enterprise decisions that yield cost avoidance, cost reductions or revenue increases and so long as the Mississippi Department of Information Technology Services can provide the necessary funds without such action causing a telephone service rate increase to agency customers. Such employees of the bureau shall be considered nonstate service employees, shall be highly qualified telecommunications professionals and may be compensated at a rate comparable to the prevailing rate of telecommunications personnel in the private sector. Such compensation rates shall be determined by the State Personnel Director. The number of such positions shall be set by annual appropriation legislation. The compensation and classification of such positions and qualifications of employees shall be set by the State Personnel Board upon recommendation by the Executive Director of the Mississippi Department of Information Technology Services. Nonstate service positions can be recommended for conversion to permanent state service on a case by case basis if the supported function appears long-term in duration, if accomplished in accordance with State Personnel Board procedures, and if properly identified in the state budgetary process.

HISTORY:
Laws, 1995, ch. 622, § 13, eff from and after July 1, 1995.

§ 25-53-109. General duties and powers of bureau.

The bureau is hereby authorized and empowered to exercise such duties and powers necessary to effectuate the purposes of Sections 25-53-101 through 25-53-125 including the following:

(a) Form an advisory council made up of persons with expertise, and experience in the field of telecommunications for the purpose of setting goals, establishing long-range plans and policies and to oversee and assist in the procurement activities regarding telecommunications equipment and services;

(b) Provide more effective management of state telecommunications resources and implement long-range plans and procurement;

(c) Manage, plan and coordinate all telecommunications systems under the jurisdiction of the state. This centralized management function would be provided throughout the following activities:

(i) Administration of existing systems including coordination of activities, vendors, service orders and billing/record-keeping functions;

(ii) Planning of new systems or services;

(iii) Design of replacement systems;

(iv) Project management during specification writing, bid letting, proposal evaluation and contract negotiations;

(v) Implementation supervision of new systems and ongoing support;

(vi) Implementation of long-term state plans; and

(vii) Management of intra-LATA and inter-LATA networks.

HISTORY:

Laws, 1995, ch. 622, § 14, eff from and after July 1, 1995.

§ 25-53-111. Additional duties of bureau; justification of requests for increases in expenditures for new telecommunication equipment systems or services; long-range plans for use of telecommunications equipment, systems and services.

The bureau shall have the following additional duties:

(a) To establish and coordinate through either state ownership or commercial leasing, all telecommunications systems and services affecting the management and operations of the state.

(b) To act as the sole centralized customer for the acquisition, billing and record keeping of all telecommunications systems or services provided to state agencies whether obtained through lease or purchase.

(c) To charge respective user agencies for their proportionate cost of the installation, maintenance and operation of the telecommunications systems and services, including the operation of the bureau.

(d) To offer or provide transmission, switch and network services on a reimbursable basis to agencies financed entirely by federal funds, to governing authorities and to other governmental agencies.

(e) To approve or provide state telephone services on a reimbursable basis to full-time students at state institutions of higher learning and junior colleges, including where such services are provided by the state or the institution.

(f) To develop coordinated telecommunications systems or services within and among all state agencies and require, where appropriate, cooperative utilization of telecommunications equipment and services by aggregating users. Where such cooperative utilization of telecommunications system or service would affect an agency authorized to receive information from the National Crime Information Center of the Federal Bureau of Investigation, such plans for cooperative utilization shall first be approved by the National Crime Information Center before implementation of such telecommunications systems or service can proceed.

(g) To review, coordinate, approve or disapprove all requests by state agencies for the procurement, through purchase or contract for lease of telecommunications systems or services including telecommunication proposals, studies and consultation contracts and intra-LATA and inter-LATA transmission channels.

(h) To establish and define telecommunications systems and services specifications and designs so as to assure compatibility of telecommunications systems and services within state government and governing authorities.

(i) To provide a continuous, comprehensive analysis and inventory of telecommunications costs, facilities and systems within state government.

(j) To promote, coordinate or assist in the design and engineering of emergency telecommunications systems, including but not limited to "911" service, emergency medical services and other emergency telecommunications services.

(k) To advise and provide consultation to agencies and governing authorities with respect to telecommunications management planning and related matters and to provide training to users within state government in telecommunications technology and system use.

(*l*) To develop policies, procedures and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and to base such policies on current information about state telecommunications activities in relation to the full range of emerging technologies.

Any state agency requesting an increase in expenditure of funds for new telecommunications equipment systems or services shall submit to the Legislative Budget Office with its budget request preceding the fiscal year for which funding is requested detailed justification for such request. The justification shall be provided on forms developed by the bureau in accordance with the Administrative Procedure Act. In addition, all state agencies shall submit to the bureau, when requested, a long-range plan for use of telecommunications equipment, systems and services.

HISTORY:
Laws, 1995, ch. 622, § 15, eff from and after July 1, 1995.

Cross References —
Administrative Procedure Act, see §§ 25-43-1.101 et seq.

§ 25-53-113. Cooperation with bureau by state agencies.

Each and every agency of the state shall give full cooperation to the bureau in furnishing all information of any kind as it pertains to telecommunications.

HISTORY:
Laws, 1995, ch. 622, § 16, eff from and after July 1, 1995.

§ 25-53-115. Approval by bureau of rentals, leases and purchases of telecommunications systems.

No agency shall rent, lease, lease/purchase, purchase or in any way own or pay for the operation of any telecommunications system out of any funds available for the use by that agency without the written approval of the bureau.

HISTORY:
Laws, 1995, ch. 622, § 17, eff from and after July 1, 1995.

§ 25-53-117. Creation of state obligations for telecommunications systems; conduct of transactions dealing with telecommunications systems.

No agency shall be permitted to obligate the state to any vendor source for a telecommunications system of any kind. All transactions dealing with a telecommunications system shall be conducted through the bureau, and any vendor found in violation of this policy may be prohibited from bidding on such systems for a period of time commensurate with the severity of the violation. Provided, however, that this period shall not exceed twenty-four (24) months.

HISTORY:
Laws, 1995, ch. 622, § 18, eff from and after July 1, 1995.

§ 25-53-119. Applicability of Sections 25-53-101 through 25-53-125.

The bureau shall, subject to the provisions of Sections 25-53-101 through 25-53-125, have sole authority and responsibility for defining the specific telecommunications equipment, systems and related services to which the provisions of Sections 25-53-101 through 25-53-125 shall be applicable. However, the provisions of Sections 25-53-101 through 25-53-125 shall not be applicable with respect to computer and telecommunications equipment, systems and related services that are only available from a sole source.

HISTORY:

Laws, 1995, ch. 622, § 19, eff from and after July 1, 1995.

§ 25-53-121. Equipment support contracts.

(1) The types of contracts permitted in the procurement of telecommunications equipment, systems and related services are defined herein, and the provisions in Sections 25-53-101 through 25-53-125 supplement the provisions of Chapter 7, Title 31, Mississippi Code of 1972.

(2) The Mississippi Department of Information Technology Services may, on behalf of any state agency, enter into an equipment support contract with a vendor of telecommunications equipment or services for the purchase or lease of such equipment or services in accordance with the following provisions:

(a) Specifications for equipment support contracts shall be developed in advance and shall conform to the following requirements:

(i) Specifications for equipment support contracts shall cover a specific class or classes of equipment and service and may include all features associated with that class or classes.

(ii) Specifications in the request for proposals for equipment support contracts shall be developed by the Mississippi Department of Information Technology Services.

(iii) Specifications shall be based on the projected needs of user agencies.

(iv) Specifications for equipment support contracts for purchase or lease of telecommunications equipment may include specifications for the maintenance of the equipment desired.

(b) The initial procurement of an equipment support contract, and procurement of equipment and services to be utilized by agencies under an equipment support contract, shall be as follows:

(i) Equipment support contracts shall be awarded by competitive sealed bidding.

(ii) A using agency may procure required telecommunications equipment and service available under an equipment support contract through release of a purchase order for the required equipment and service to the vendor holding an equipment support contract. However, such procurement by purchase order shall be accomplished in accordance with the procedures and regulations prescribed by the Mississippi Department of Information Technology Services, and shall be subject to all other statutory requirements including approval by the bureau.

(c) The final authority for entering into equipment support contracts shall rest with the bureau, and such contracts shall be executed by the Mississippi Department of Information Technology Services in accordance with the procedures and regulations defined by said authority.

(d) Equipment support contracts shall include the following terms and conditions:

(i) Equipment support contracts shall be valid for not more than one (1) fiscal year with the Mississippi Department of Information Technology

Services having an option to renew for two (2) additional fiscal years. The vendor may vary lease or purchase prices for the optional renewal period(s) by an amount equal to the lesser of the lease or purchase price permitted by that vendor's contract with the General Services Administration of the United States Government for such equipment and services, or any variance in that vendor's published list prices for such equipment and services during that fiscal year, provided that any increase may not exceed five percent (5%) and the variance must have been authorized by the initial equipment and service order contract.

(ii) The prices stated in such contract shall not change for the period of the contract.

(iii) Individual items of telecommunications equipment and service which may be included under an equipment support contract may not have a purchase price greater than Fifty Thousand Dollars ($50,000.00) or a monthly lease price greater than Three Thousand Dollars ($3,000.00). Such price shall not include costs of maintenance, taxes or transportation.

(iv) Equipment support contracts shall include the following annual appropriation dependency clause:

"The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuance of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated."

(3) The Mississippi Department of Information Technology Services may on behalf of any state agency enter into contracts for the lease or purchase of telecommunications equipment systems or services in accordance with the following provisions:

(a) The bureau may directly contract for or approve contracts for regulated or tariffed telecommunications services upon determination by the bureau that the application of such service is in the best interests of the State of Mississippi.

(b) All other contracts of this type shall be entered into through request for proposals as defined in Sections 25-53-101 through 25-53-125.

(c) The justification of such contracts must be presented to the bureau prior to issuance of a request for proposals. Such justification shall identify and consider all cost factors relevant to that contract.

(d) The term of a lease contract shall not exceed sixty (60) months for a system lease valued less than One Million Dollars ($1,000,000.00) and shall not exceed one hundred twenty (120) months for a system lease valued One Million Dollars ($1,000,000.00) or more.

(e) All lease contracts must contain the following annual appropriation dependency clause:

"The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuation of a contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated."

(f) The Mississippi Department of Information Technology Services shall maintain a list of all such contracts. This list shall show as a minimum the name of the vendor, the annual cost of each contract and the term of the contract or the purchase cost.

(g) Upon the advance written approval of the bureau, state agencies may extend contracts for the lease of telecommunications equipment, systems and related services on a month-to-month basis for a period not to extend more than one (1) calendar year for the stated lease prices.

HISTORY:

Laws, 1995, ch. 622, § 20, eff from and after July 1, 1995.

§ 25-53-123. Method of procurement of nonregulated telecommunications systems.

(1) The only method of procurement permitted for the acquisition of nonregulated telecommunications systems, including equipment and related services, shall be in conformity with the following requirements: All acquisitions of telecommunications equipment, systems and related services involving the expenditures of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c), for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(2) When applicable, the bureau may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Governor's Office of General Services or which govern the Mississippi Department of Information Technology Services procurement of computer equipment, software and services.

HISTORY:

Laws, 1995, ch. 622, § 21; Laws, 1999, ch. 410, § 4, eff from and after passage (approved Mar. 17, 1999).

§ 25-53-125. General provisions applicable to all procurements under Sections 25-53-101 through 25-53-125.

The following general provisions shall apply to all procurements under Sections 25-53-101 through 25-53-125:

(a) No contracts entered into hereunder shall have an initial effective date earlier than the date on which such contract receives approval as required herein.

(b) All changes, modifications and amendments to any contract hereunder shall be approved in advance by the bureau, in addition to any other approvals required by law.

(c) The bureau shall promulgate rules and regulations in accordance with the Administrative Procedure Act, Section 25-43-1, et seq., Mississippi Code of 1972, for the establishment of contract format.

(d) Where written proposals or bids are submitted by vendors, the proposal or bid of the successful vendor shall be incorporated into the final contract consummated with that vendor.

(e) The provisions of Sections 25-53-101 through 25-53-125 shall, with respect to the procurement of telecommunications equipment, systems or related services, supersede specifications of any contradictory or conflicting provisions of Chapter 7, Title 31, Mississippi Code of 1972, and other laws with respect to awarding public contracts.

HISTORY:

Laws, 1995, ch. 622, § 22, eff from and after July 1, 1995.

Editor's Notes —

The reference in (c) to the provisions of the Administrative Procedures Act, should be to §§ 25-43-1.101 et seq., not §§ 25-43-1 et seq. Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

ELECTRONIC GOVERNMENT SERVICES

Sec.	
25-53-151.	Electronic Government Services Fund established; Electronic Government Oversight Committee established to oversee implementation of E-Government and related technology initiatives; duties of committee; composition of committee; committee meetings; committee reports and recommendations; funding of agency expenses.

§ 25-53-151. Electronic Government Services Fund established; Electronic Government Oversight Committee established to oversee implementation of E-Government and related technology initiatives; duties of committee; composition of committee; committee meetings; committee reports and recommendations; funding of agency expenses.

(1) There is established in the State Treasury the “Electronic Government Services Fund,” into which shall be deposited specific funds appropriated by the Legislature for developing and providing electronic government services within the State of Mississippi. Any funds in the Electronic Government Services Fund at the end of a fiscal year shall not lapse into the State General Fund, but shall be available for expenditure in the subsequent fiscal year. The funds in the Electronic Government Fund shall be available for expenditure pursuant to specific appropriation by the Legislature beginning in fiscal year 2002, to the Mississippi Department of Information Technology Services.

(2) There is hereby established an Electronic Government Oversight

Committee to oversee the implementation of E-Government and related technology initiatives. Duties of this committee would include: (a) prioritize and make recommendations for all electronic government services, in order to cut across state and local governmental organizational structures; (b) address policy issues such as privacy, security, transaction fees and accessibility; (c) review ongoing fiscal and operational management and support of portal; (d) provide a mechanism for gathering input from citizens, businesses and government entities; (e) encourage self-service models for citizens through state websites and other electronic services; and (f) promote economic development and efficient delivery of government services by encouraging governmental and private sector entities to conduct their business and transactions using electronic media. The Electronic Government Oversight Committee shall be composed of the following: (a) the Executive Director of the Mississippi Department of Information Technology Services, or his designee; (b) the State Auditor, or his designee; (c) the State Treasurer, or his designee; (d) the Secretary of State, or his designee; (e) the Executive Director of the Department of Finance and Administration, or his designee; (f) the Commissioner of Public Safety, or his designee; (g) the Commissioner of Revenue, or his designee. The committee shall annually elect one (1) member to serve as chairman and one (1) member to serve as vice chairman, who shall act as chairman in the absence of the chairman. The committee shall meet monthly or upon the call of the chairman, and shall make necessary reports and recommendations to the Legislature and the appropriate agencies of state government. All agencies of state government shall cooperate with the committee in providing requested information, shall work closely with and provide information to the committee and shall report to the committee at its request. The Mississippi Department of Information Technology Services shall provide administrative support for the committee. Nonlegislative members of the committee shall serve without compensation.

(3) The Electronic Government Oversight Committee shall advise and provide direction to the Department of Finance and Administration to develop a procurement portal that will enable potential vendors of goods and services to access relevant and necessary information related to the sale of the following types of goods and services to the State of Mississippi and its agencies:

(a) Commodities, as defined by Section 31-7-1;

(b) Contract personnel, as defined by Sections 25-9-107 and 25-9-120; and

(c) Computer equipment and services, as defined by Section 25-53-3.

(4) The procurement portal provided for in subsection (3) must provide potential vendors with the following:

(a) A searchable database of business procurement opportunities with the state which includes a breakdown by product or service and by the organization seeking the product or service;

(b) Listings of the published date and closing date for each business procurement opportunity;

(c) A "Frequently Asked Questions" section regarding doing business with the respective agencies;

(d) A breakdown of "Frequently Asked Questions" regarding the selection process with the respective agencies;

(e) An open-air forum for questions and answers relating to the procurement process, in general, as well as specifically relating to a single contract; and

(f) Links to individual agency websites and contacts to enable potential vendors to obtain more specific information, if necessary.

(5) The procurement portal must be linked to the Transparency Mississippi website established in accordance with Sections 27-104-151 through 27-104-163. The Mississippi Department of Information Technology Services shall develop and maintain a link to the procurement portal from the state website.

From and after July 1, 2018, the expenses of this agency shall be defrayed by appropriation from the State General Fund. In addition, in order to receive the maximum use and benefit from information technology and services, expenses for the provision of statewide shared services that facilitate cost-effective information processing and telecommunication solutions shall be defrayed by pass-through funding and shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature. These funds shall only be utilized to pay the actual costs incurred by the Mississippi Department of Information Technology Services for providing these shared services to state agencies. Furthermore, state agencies shall work in full cooperation with the Board of the Mississippi Department of Information Technology Services (MDITS) to identify computer equipment or services to minimize duplication, reduce costs, and improve the efficiency of providing common technology services across agency boundaries.

HISTORY:

Laws, 2001, ch. 509, § 1; Laws, 2011, ch. 518, § 1; Laws, 2014, ch. 447, § 1; brought forward without change, Laws, 2015, ch. 431, § 19; Laws, 2016, ch. 459, § 14, eff from and after July 1, 2016; Laws, 2018, ch. 433, § 5, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. In (3), "to access relevant" was substituted for "access to relevant." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes —

The 2018 amendment deleted (6) and (7), which read: "(6) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law. (7) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section"; and added the last paragraph.

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

WIRELESS COMMUNICATION COMMISSION

Sec.	
25-53-171.	Commission created; responsibilities; membership; meetings; powers and duties; staffing and technical support; Integrated Public Safety Communications Fund; compensation; Wireless Communication Advisory Board; public properties and facilities to be made available to commission; section does not authorize regulation of commercial mobile radio services; section does not supercede authority of MDITS; funding of agency expenses; deposit of monies into State General Fund.

§ 25-53-171. Commission created; responsibilities; membership; meetings; powers and duties; staffing and technical support; Integrated Public Safety Communications Fund; compensation; Wireless Communication Advisory Board; public properties and facilities to be made available to commission; section does not authorize regulation of commercial mobile radio services; section does not supercede authority of MDITS; funding of agency expenses; deposit of monies into State General Fund.

(1) There is hereby created the Wireless Communication Commission, which shall be responsible for promoting the efficient use of public resources to ensure that law enforcement personnel and essential public health and safety personnel have effective communications services available in emergency situations, and to ensure the rapid restoration of such communications services in the event of disruption caused by natural disaster, terrorist attack or other public emergency.

(2) The Wireless Communication Commission, hereafter referred to as the "commission," shall consist of the following:

(a) The Executive Director of the Department of Transportation or his designee;

(b) The Commissioner of Public Safety or his designee;

(c) The Executive Director of the Department of Public Health or his designee;

(d) The Executive Director of the Department of Information Technology Services or his designee;

(e) The Executive Director of the Mississippi Emergency Management Agency or his designee;

(f) The Executive Director of the Mississippi Office of Homeland Security or his designee;

(g) The President of the Mississippi Sheriffs' Association or his designee;

(h) The President of the Mississippi Association of Supervisors or his designee;

(i) The President of the Mississippi Municipal Association or his designee;

(j) The President of the Mississippi Association of Fire Chiefs or his designee;

(k) The President of the Mississippi Association of Police Chiefs or his designee;

(*l*) The Chief of the Mississippi Highway Safety Patrol or his designee;

(m) The Commissioner of the Department of Corrections or his designee;

(n) The Adjutant General of the Mississippi National Guard or his designee;

(o) The Executive Director of the Mississippi Department of Environmental Quality or his designee; and

(p) The Executive Director of Wildlife, Fisheries and Parks or his designee.

All members of the commission shall serve a term of not less than four (4) years.

(3) Within forty-five (45) days from April 21, 2005, the Executive Director of the Department of Information Technology Services shall call a meeting of the commission in the City of Jackson, Mississippi, and organize by electing a chairman and other officers from its membership. The commission shall adopt rules which govern the time and place for meetings and governing the manner of conducting its business. The commission shall meet at least monthly and maintain minutes of such meetings. A quorum shall consist of a majority of the membership of the commission.

(4) The commission, in conjunction with the Department of Information Technology Services, shall have the sole authority to promulgate rules and regulations governing the operations of the wireless communications system described in paragraph (a) and shall be vested with all legal authority necessary and proper to perform this function including, but not limited to:

(a) Purchasing, leasing, acquiring and otherwise implementing a statewide wireless communications system to serve wireless users in state and local governments and those private entities that enter into a partnership with the commission. All purchases shall be made in accordance with public purchasing laws and, if required, shall be approved by the Department of Information Technology Services. This system shall enable interoperability between various wireless communications technologies.

(b) Ensuring that federal/state communications requirements are followed with respect to such wireless communications systems.

(c) Providing system planning with all public safety communications systems.

(d) Assisting with establishment of state and local wireless communications.

(e) In consultation with the Department of Information Technology Services, having the authority to permit state and local agencies use of the communications system under the terms and conditions established by the commission.

(f) Providing technical support to users and bearing the overall responsibility for the design, engineering, acquisition and implementation of the statewide communications system and for ensuring the proper operation and maintenance of all equipment common to the system.

(g) Seeking proposals for services through competitive processes where required by law and selecting service providers under procedures provided for by law.

(h) Establishing, in conjunction with the Department of Information Technology Services, policies, procedures and standards which shall be incorporated into a comprehensive management plan for the operation of the statewide communications system.

(i) Having sign-off approval on all wireless communications systems within the state which are owned or operated by any state or local governmental entity, agency or department.

(j) Creating a standard user agreement.

(5) The commission, in conjunction with the Department of Information Technology Services, shall exercise its powers and duties pursuant to this section to plan, manage and administer the wireless communications system. The commission may:

(a) In consultation with the advisory board and the Department of Information Technology Services, establish policies, procedures and standards to incorporate into a comprehensive management plan for use and operation of the communications system.

(b) Enter into mutual aid agreements among federal, state and local agencies for the use of the communications system.

(c) Establish the cost of maintenance and operation of the system and charge subscribers for access and use of the system.

(d) Assess charges for use of the system.

(e) Obtain space through rent or lease of space on any tower under state control. The commission may also rent, lease or sublease ground space as necessary to locate equipment to support antennae on the towers. The costs for use of such space shall be established by the owner/agent for each site when it is determined to be practicable and feasible to make space available.

(f) Provide space through rent or lease of space on any tower under the commission's control. The commission may also rent, lease or sublease ground space as necessary to locate equipment to support antennae on the towers. The costs for use of such space shall be established by the commission when it is determined to be practicable and feasible to make space available.

(g) Refuse to lease space on any tower at any site. All monies collected by the commission for such rents, leases or subleases shall be deposited directly into a special fund hereby created and known as the "Integrated Public Safety Communications Fund." This fund shall be administered by the Department of Information Technology Services and may be used by the commission to construct, maintain and operate the system.

(h) Rent, lease or sublease ground space on lands acquired by the commission for the construction of privately owned or publicly owned towers. The commission, as part of such rental, lease or sublease agreement, may require space on such towers for antennae as may be necessary for the construction and operation of the wireless communications system.

(i) Enter into and perform use and occupancy agreements concerning the system.

(j) Exercise any power necessary to carry out the intent of this law.

(6) The Department of Transportation, the Department of Public Safety and other commission members may provide to the commission, on a full-time or part-time basis, personnel and technical support necessary and sufficient to effectively and efficiently carry out the requirements of this section.

(7)(a) Expenditures from the Integrated Public Safety Communications Fund shall be administered by the Department of Information Technology Services with expenditures approved jointly by the commission and the Department of Information Technology Services.

(b) The Integrated Public Safety Communications Fund may consist of the following:

(i) Appropriations from the Legislature;

(ii) Gifts;

(iii) Federal grants;

(iv) Fees and contributions from user agencies that the commission considers necessary to maintain and operate the system; and

(v) Monies from any other source permitted by law.

(c) Any monies remaining in the Integrated Public Safety Communications Fund at the end of the fiscal year shall not revert to the State General Fund, but shall remain in the Integrated Public Safety Communications Fund.

(8) Members of the commission shall not receive any compensation or per diem, but may receive travel reimbursement provided for under Section 25-3-41.

(9) There is hereby created the Wireless Communication Advisory Board for the purpose of advising the Mississippi Wireless Communication Commission in performance of its duties. The advisory board shall be composed of the following:

(a) The Chairman and Vice Chairman of the Senate Public Utilities Committee or their designees;

(b) The Chairman and Vice Chairman of the House of Representatives Public Utilities Committee or their designees;

(c) The Chairman of the Senate Appropriations Committee or his designee;

(d) The Chairman of the House of Representatives Appropriations Committee or his designee;

(e) The Chairman of the Senate Finance Committee or his designee; and

(f) The Chairman of the House of Representatives Ways and Means Committee or his designee.

Members of the advisory board shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the advisory board shall be paid to legislative members while the Legislature is in session.

(10) It is the intent of the Legislature that all state and local government entities make available for purposes of this section all publicly owned wireless communications infrastructure, including, but not limited to, communications towers, transmission equipment, transmission frequencies and other related properties and facilities.

(11) Nothing in this section shall be construed or interpreted to provide for the regulation or oversight of commercial mobile radio services.

(12) Nothing in this section shall be construed to supersede the authority of the Department of Information Technology Services provided in Section 25-53-1 et seq.

(13) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(14) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY:

Laws, 2005, ch. 536, § 1; Laws, 2011, ch. 445, § 1; Laws, 2016, ch. 459, § 15, eff from and after July 1, 2016.

Editor's Notes —

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References —

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

WIRELESS COMMUNICATION DEVICES ASSIGNED OR ISSUED TO STATE EMPLOYEES

Sec.

25-53-191. Statement of need for issuance of wireless communication device to agency officer or employee; prohibition against personal use of device owned by state agencies; prohibition against reimbursement for use of personal wireless communication device; wireless communication device vendors to be selected from state-approved list; model policy regulating personal use of state-owned wireless communication devices to be established; state agencies to adopt model policy or other equally stringent policy.

§ 25-53-191. Statement of need for issuance of wireless communication device to agency officer or employee; prohibition against personal use of device owned by state agencies; prohibition against reimbursement for use of personal wireless communication device; wireless communication device vendors to be selected from state-approved list; model policy regulating personal use of state-owned wireless communication devices to be established; state agencies to adopt model policy or other equally stringent policy.

(1) For the purposes of this section, the following terms shall have the meanings ascribed to them in this section unless the context otherwise clearly requires:

(a) "Department" means the Mississippi Department of Information Technology.

(b) "State agency" means any agency, department, commission, board, bureau, institution or other instrumentality of the state.

(c) "Wireless communication device" means a cellular telephone, pager or a personal digital assistant device having wireless communication capability.

(2) Before a wireless communication device may be assigned, issued or made available to an agency officer or employee, the agency head, or his designee, shall sign a statement certifying the need or reason for issuing the device. No officer or employee of any state agency, except for an officer or employee of the Mississippi Emergency Management Agency, shall be assigned or issued more than one (1) such wireless communication device. No officer or employee of any state agency to whom has been assigned, issued or made available the use of a wireless communication device, the cost of which is paid through the use of public funds, shall use such device for personal use.

(3) A state agency shall not reimburse any officer or employee for use of his or her personal wireless communication device.

(4) Every state agency that, at the expense of the state agency, assigns, issues or makes available to any of its officers or employees a wireless communication device shall obtain and maintain detailed billing for every wireless communication device account. A list of approved vendors for the procurement of wireless communication devices and the delivery of wireless communication device services shall be developed for all state agencies by the Mississippi Department of Information Technology Services in conjunction with the Wireless Communication Commission created in Section 25-53-171. The department, in conjunction with the Wireless Communication Commission, shall exercise the option of selecting one (1) vendor from which to procure wireless communication devices and to provide wireless communication device services, or if it deems such to be most advantageous to the state agencies, it may select multiple vendors. The department, in conjunction with the Wireless Communication Commission, shall select a vendor or vendors on the basis of lowest and best bid proposals. A state agency may not procure a wireless

communication device from any vendor or contract for wireless communication device services with any vendor unless the vendor appears on the list approved by the department, in conjunction with the Wireless Communication Commission. A contract entered into in violation of this section shall be void and unenforceable.

(5) The department shall promulgate a model acceptable use policy defining the appropriate use of all wireless communication devices. The acceptable use policy should specify that these resources, including both devices and services, are provided at the state agency's expense as tools for accomplishing the business missions of the state agency; that all those resources are for business use; and that more than incidental personal use of those resources is prohibited. The acceptable use policy should require that each official and employee issued one (1) of the above devices or authorized to access one (1) of the above services sign the policy and that the signed copy be placed in the personnel file of the official or employee. The acceptable use policy should also require that the use of these resources be tracked, verified and signed by the official or employee and the supervisor of the official or employee at each billing cycle or other appropriate interval. All state agencies shall adopt the model policy or adopt a policy that is, at minimum, as stringent as the model policy and shall provide a copy of the policy to the department.

(6) All state agencies shall purchase or acquire only the lowest cost cellular telephone, pager or personal digital assistance device which will carry out its intended use.

(7) The University of Mississippi Medical Center and its employees, the Mississippi State University Extension Service and its agents and faculty members, the Mississippi State University Agricultural and Forestry Experiment Station and its faculty members, the Mississippi State University Forestry and Wildlife Research Center and its faculty members, and the Mississippi State University College of Veterinary Medicine and its faculty members shall be exempt from the application of this section.

(8) The State Auditor shall conduct necessary audits to ensure compliance with the provisions of this section.

HISTORY:

Laws, 2006, ch. 537, § 9; Laws, 2008, ch. 401, § 1; Laws, 2013, ch. 452, § 2, eff from and after July 1, 2013.

Cross References —

Purchase of wireless communication devices by state agency, special-fund agency or general-fund agency to be specific line item in the agency's appropriation bill beginning July 1, 2007, see § 27-103-129.

ENTERPRISE SECURITY PROGRAM

Sec.
25-53-201. Enterprise Security Program established to provide for coordinated oversight of cybersecurity efforts across state agencies.

§ 25-53-201. Enterprise Security Program established to provide for coordinated oversight of cybersecurity efforts across state agencies.

(1) There is hereby established the Enterprise Security Program which shall provide for the coordinated oversight of the cybersecurity efforts across all state agencies, including cybersecurity systems, services and the development of policies, standards and guidelines.

(2) The Mississippi Department of Information Technology Services (MDITS), in conjunction with all state agencies, shall provide centralized management and coordination of state policies for the security of data and information technology resources, which such information shall be compiled by MDITS and distributed to each participating state agency. MDITS shall:

(a) Serve as sole authority, within the constraints of this statute, for defining the specific enterprise cybersecurity systems and services to which this statute is applicable;

(b) Acquire and operate enterprise technology solutions to provide services to state agencies when it is determined that such operation will improve the cybersecurity posture in the function of any agency, institution or function of state government as a whole;

(c) Provide oversight of enterprise security policies for state data and information technology (IT) resources including, the following:

(i) Establishing and maintaining the security standards and policies for all state data and IT resources state agencies shall implement to the extent that they apply; and

(ii) Including the defined enterprise security requirements as minimum requirements in the specifications for solicitation of state contracts for procuring data and information technology systems and services;

(d) Adhere to all policies, standards and guidelines in the management of technology infrastructure supporting the state data centers, telecommunications networks and backup facilities;

(e) Coordinate and promote efficiency and security with all applicable laws and regulations in the acquisition, operation and maintenance of state data, cybersecurity systems and services used by agencies of the state;

(f) Manage, plan and coordinate all enterprise cybersecurity systems under the jurisdiction of the state;

(g) Develop, in conjunction with agencies of the state, coordinated enterprise cybersecurity systems and services for all state agencies;

(h) Provide ongoing analysis of enterprise cybersecurity systems and services costs, facilities and systems within state government;

(i) Develop policies, procedures and long-range plans for the use of enterprise cybersecurity systems and services;

(j) Form an advisory council of information security officers from each state agency to plan, develop and implement cybersecurity initiatives;

(k) Coordinate the activities of the advisory council to provide education and awareness, identify cybersecurity-related issues, set future direction for cybersecurity plans and policy, and provide a forum for interagency communications regarding cybersecurity;

(*l*) Charge respective user agencies on a reimbursement basis for their proportionate cost of the installation, maintenance and operation of the cybersecurity systems and services; and

(m) Require cooperative utilization of cybersecurity systems and services by aggregating users.

(3) Each state agency's executive director or agency head shall:

(a) Be solely responsible for the security of all data and IT resources under its purview, irrespective of the location of the data or resources. Locations include data residing:

(i) At agency sites;

(ii) On agency real property and tangible and intangible assets;

(iii) On infrastructure in the State Data Centers;

(iv) At a third party location;

(v) In transit between locations;

(b) Ensure that an agency-wide security program is in place;

(c) Designate an information security officer to administer the agency's security program;

(d) Ensure the agency adheres to the requirements established by the Enterprise Security Program, to the extent that they apply;

(e) Participate in all Enterprise Security Program initiatives and services in lieu of deploying duplicate services specific to the agency;

(f) Develop, implement and maintain written agency policies and procedures to ensure the security of data and IT resources. The agency policies and procedures are confidential information and exempt from public inspection, except that the information must be available to the Office of the State Auditor in performing auditing duties;

(g) Implement policies and standards to ensure that all of the agency's data and IT resources are maintained in compliance with state and federal laws and regulations, to the extent that they apply;

(h) Implement appropriate cost-effective safeguards to reduce, eliminate or recover from identified threats to data and IT resources;

(i) Ensure that internal assessments of the security program are conducted. The results of the internal assessments are confidential and exempt from public inspection, except that the information must be available to the Office of the State Auditor in performing auditing duties;

(j) Include all appropriate cybersecurity requirements in the specifications for the agency's solicitation of state contracts for procuring data and information technology systems and services;

(k) Include a general description of the security program and future plans for ensuring security of data in the agency long-range information technology plan;

(*l*) Participate in annual information security training designed specifically for the executive director or agency head to ensure that such individual has an understanding of:

(i) The information and information systems that support the operations and assets of the agency;

(ii) The potential impact of common types of cyber-attacks and data breaches on the agency's operations and assets;

(iii) How cyber-attacks and data breaches on the agency's operations and assets could impact the operations and assets of other state agencies on the Enterprise State Network;

(iv) How cyber-attacks and data breaches occur;

(v) Steps to be undertaken by the executive director or agency head and agency employees to protect their information and information systems; and

(vi) The annual reporting requirements required of the executive director or agency head.

HISTORY:

Laws, 2017, ch. 316, § 1, eff from and after July 1, 2017.

CHAPTER 55.

LOST RECORDS

Sec.
25-55-1. Applicability of the chapter.
25-55-3. Remedy for lost record of deed.
25-55-5. Duty of chancellor and supervisors as to abstracts.
25-55-7. Effect of such abstracts.
25-55-9. Record in books.
25-55-11. In pending suits.
25-55-13. Loss first discovered during trial.
25-55-15. Assessment rolls.
25-55-17. Records of board of supervisors.
25-55-19. State, county, town, or levee board bonds or warrants.
25-55-21. Content of duplicate bond or warrant.
25-55-23. Duplicate for mutilated original.
25-55-25. Duplicate for lost or destroyed original.
25-55-27. Officer issuing duplicates of bonds and warrants to keep records and preserve indemnity bonds and affidavits.
25-55-28. Presentation of photocopy of state warrant where original has been lost or destroyed.
25-55-29. Registration and poll-books.
25-55-31. Proceedings to perfect record.

§ 25-55-1. Applicability of the chapter.

The provisions of this chapter shall apply as well to records heretofore as hereafter lost, stolen, or destroyed.

HISTORY:

Codes, 1892, § 2806; 1906, § 3186; Hemingway's 1917, § 2527; 1930, § 2347; 1942, § 777.

JUDICIAL DECISIONS

ANALYSIS

1. Burden of proof.
2. Defenses.
3. Evidence.
4. Recovery.
5. Dismissal of action.
6. Miscellaneous.

1. Burden of proof.

In an action of ejectment respecting the location of a division line and the plaintiff shows that the land in controversy is embraced in his deed, and the defendant relies upon an alleged parol agreement, the burden of proof is upon him to show such agreement, and it is proper so to instruct the jury. Archer v. Helm, 70 Miss. 874, 12 So. 702, 1893 Miss. LEXIS 22 (Miss. 1893).

2. Defenses.

A wife in possession of the husband's homestead, when sued in ejectment by his vendees, may show that he was insane at the time, after abandoning her, when he executed the deed to plaintiff. Larson v. Larson, 82 Miss. 116, 33 So. 717, 1903 Miss. LEXIS 104 (Miss. 1903).

A plaintiff seeking recovery on a tax title cannot be shown by the defendant to have been incapacitated to purchase at tax sale, such a defense being equitable rather than legal. Graham v. Warren, 81 Miss. 330, 33 So. 71, 1902 Miss. LEXIS 150 (Miss. 1902).

That a municipal tax deed under which plaintiff claims, which was not filed with the clerk in accordance with Code 1892, §§ 3022, 3823 (Code 1906, §§ 3425, 4338), is available as a defense in ejectment, but is not such a defense as will support a subsequent bill for cancellation. Sintes v. Barber, 78 Miss. 585, 29 So. 403, 1900 Miss. LEXIS 156 (Miss. 1900).

A party rightfully in possession of land under a bond for title can set up his right for defense to an action of ejectment. Bolton v. Roebuck, 77 Miss. 710, 27 So. 630, 1900 Miss. LEXIS 21 (Miss. 1900).

3. Evidence.

Where defendant claimed under deeds containing conditions precedent, it was error to exclude plaintiff's testimony as to whether the conditions had been met. Maxwell v. Mississippi Valley Co., 95 Miss. 466, 48 So. 610, 1909 Miss. LEXIS 220 (Miss. 1909).

A tax deed conveying to plaintiff in ejectment a town lot designated as "lot 9 on the south side of Otto Street" does not entitle him to the recovery of a lot bearing the same number south of, but not bordering that street on the south side. Illinois C. R. Co. v. Baldwin, 77 Miss. 788, 28 So. 948, 1900 Miss. LEXIS 62 (Miss. 1900).

An unsealed deed, executed prior to the Code 1880, which abolishes private seals, does not convey the legal title, although it was executed in another state where seals were not required. Gibbs v. McGuire, 70 Miss. 646, 12 So. 829, 1893 Miss. LEXIS 32 (Miss. 1893).

A plaintiff in ejectment who introduces a patent from the state in which the locus in quo is referred to as swampland, and a certificate from the general land office showing that it is included in the list of swamp and overflowed lands inuring to the state under the Act of Congress, September, 1850, makes out a case. Muse v. Richards, 70 Miss. 581, 12 So. 821, 1893 Miss. LEXIS 27 (Miss. 1893).

4. Recovery.

This provision has no application to a case where defendant's plea eliminates any controversy as to the land involved, as where the defendant claims title only as to a specific part of the land described in the declaration; it applies alone to a case where the plaintiff contends to the last for certain described premises and recovers a smaller amount. Carmichael v. J. Cahn Co., 183 Miss. 535, 184 So. 417, 1938 Miss. LEXIS 266 (Miss. 1938).

In an action of ejectment against a railroad company to recover land upon which it has wrongfully entered and constructed its track, but acted in good faith the plaintiff's recovery will be limited to the land itself, with compensation for any use and occupation to the same to cover damages done thereto by the defendant. He cannot recover the track or any sum for the use thereof. Illinois C. R. Co. v. Hoskins, 80 Miss. 730, 32 So. 150, 1902 Miss. LEXIS 301 (Miss. 1902).

5. Dismissal of action.

Where plaintiff in good faith sold land, it was entitled to dismiss the suit without prejudice. Hibernia Bank & Trust Co. v. Beech, 117 Miss. 668, 78 So. 609, 1918 Miss. LEXIS 210 (Miss. 1918).

Where plaintiff sells land, and moves for a dismissal without prejudice, he should be taxed with costs incurred previous to the nonsuit. Hibernia Bank & Trust Co. v. Beech, 117 Miss. 668, 78 So. 609, 1918 Miss. LEXIS 210 (Miss. 1918).

6. Miscellaneous.

Plaintiff, though claiming land under grantor with defective title, was entitled to recover land from defendant, where his possession of land was prior to that of defendant, who was a mere intruder. Stewart v. Kennedy & Co., 118 Miss. 766, 80 So. 105, 1918 Miss. LEXIS 134 (Miss. 1918).

Ejectment cannot be maintained against one holding under a bond for title, executed by plaintiff or his privies, without evidence of a tender of a deed to and the placing of defendant in default, and in such case it is immaterial that a deed was tendered defendant by strangers to the bond. Graham v. Warren, 81 Miss. 330, 33 So. 71, 1902 Miss. LEXIS 150 (Miss. 1902).

A decree of chancery court dismissing a bill filed to cancel a deed because of failure by the defendant to show title in himself is not res adjudicata in an action of ejectment for the same land between the same parties, and the record thereof is not admissible in evidence. Hart v. Picard, 75 Miss. 651, 23 So. 450, 1898 Miss. LEXIS 26 (Miss. 1898).

A decree dismissing a bill to redeem an undivided interest in lands from tax sale and for partition after redemption does not estop the complainant from setting up the invalidity of the tax sale when sued in ejectment, although the bill, by an amendment stricken out prior to final decree, assailed the validity of the tax title. Brothers v. Beck, 75 Miss. 482, 22 So. 944, 1897 Miss. LEXIS 126 (Miss. 1898).

§ 25-55-3. Remedy for lost record of deed.

Whenever the record of deeds of any county, or any book or part of a book thereof shall be destroyed, stolen, or lost, the same may be remedied–

(a) By the re-record of the original of whatever may have been therein recorded; or

(b) By the recording of decrees adjudicating the execution of lost or destroyed or stolen instruments of all kinds, and perpetuating testimony, and of decrees confirming titles to land or cancelling titles thereto; or

(c) By the recording of certified copies of whatever may have been recorded in the lost, destroyed, or stolen record, which may have been taken from the said record, or which may be taken from the records of any other county in which the original may have been recorded, or from the files of any court of record in this state or any other state, or of the United States, or of any public office of this state or of the United States, in which the original or authenticated copies may be found.

HISTORY:

Codes, 1892, § 2790; 1906, § 3170; Hemingway's 1917, § 2511; 1930, § 2332; 1942, § 762.

Cross References —

Binding and reproduction of county records, see §§ 19-15-1 et seq.

Issuance of duplicate conveyance or release by chancery clerk for land sold at tax sale, see § 27-45-25.

Issuance of duplicate conveyance or release, see § 29-1-111.

Recording, indexing, and copying of instruments conveying an interest in land, see §§ 89-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Affidavits respecting date of ninety-nine-year lease destroyed in courthouse fire and which were executed pursuant to statute that such affidavits when executed and recorded should stand in place of lost deed, held to control over conflicting recitals contained in deeds conveying part of land involved. Lord v. Kosciusko, 170 Miss. 169, 154 So. 346, 1934 Miss. LEXIS 119 (Miss. 1934).

RESEARCH REFERENCES

ALR.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense. 75 A.L.R.4th 1067.

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 7 et seq.

17 Am. Jur. Pl and Pr Forms (Rev), Lost and Destroyed Instruments, Form 25 (order for restoration of lost deed).

CJS.

54 C.J.S., Lost Instruments §§ 8-10.

§ 25-55-5. Duty of chancellor and supervisors as to abstracts.

In any county in which the record of deeds, or any material part thereof, may be destroyed, the chancellor may examine into the matter; and if he find any abstracts, copies, minutes, or extracts from said records existing after such destruction, he shall appoint two (2) persons learned in such matters to act with him, and the three (3) shall investigate the same. If they find that the abstracts, copies, minutes, or extracts were fairly made before such destruction of the records, and that they contain material and substantial parts of the destroyed records, they shall so certify to the board of supervisors; and thereupon the board of supervisors shall have power to purchase such abstracts, minutes, copies, or extracts, or any part thereof, or to procure copies thereof and to pay therefor, out of the county treasury, a reasonable compensation.

HISTORY:
Codes, 1892, § 2791; 1906, § 3171; Hemingway's 1917, § 2512; 1930, § 2333; 1942, § 763.

Cross References —
Recording and copying of certain records and instruments, see §§ 89-5-1 et seq.

RESEARCH REFERENCES

Am. Jur.
52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 7 et seq.

CJS.
54 C.J.S., Lost Instruments §§ 3-7.

§ 25-55-7. Effect of such abstracts.

Such abstracts, copies, minutes, or extracts, or the copy thereof if so procured, shall be filed in the office of the clerk of the chancery court and copies recorded and arranged in such form as the board of supervisors may direct. In case the originals have been lost or destroyed, or are not in the power of the party asking to use the same on any trial or other proceedings, copies of such abstracts, copies, minutes, or extracts, or any part thereof, duly certified by the chancery clerk, shall be admissible in evidence, and shall establish prima facie that all deeds or other instruments appearing thereby to have been executed by any person, were executed and acknowledged at the date given, according to law.

HISTORY:
Codes 1892, § 2792; 1906, § 3172; Hemingway's 1917, § 2513; 1930, § 2334; 1942, § 764.

RESEARCH REFERENCES

Am. Jur.
52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 7 et seq.

CJS.
54 C.J.S., Lost Instruments §§ 3-7.

§ 25-55-9. Record in books.

Where any part of the court record was recorded or enrolled in a book, and the record thereof is stolen, lost or destroyed – as the record of wills, register of claims, minute-book, judgment-roll, or the like – the court shall direct its record or enrollment anew, as of the date of its original record or enrollment.

HISTORY:
Codes, 1892, § 2794; 1906, § 3174; Hemingway's 1917, § 2515; 1930, § 2335; 1942, § 765.

Cross References —
Maintenance of minute book by chancery clerk, see § 9-5-135.

Register of claims maintained by chancery clerk, see § 9-5-173.

Recording of wills, see § 91-7-31.

JUDICIAL DECISIONS

1. In general.
Where the loss of a part of the note sued upon was not shown to have been discovered until during the progress of the trial in the county court, and the proof disclosed that the attorney for the plaintiff had correctly copied the original note as a part of the declaration in the case, admission of the note was not objectionable on

the ground that defendant had no notice that the plaintiff would undertake to substitute or supply the part of the record which had been lost or destroyed, in view of the statute providing for substitution of record, or any part thereof, loss of which is first discovered during the progress of a trial, without any other notice than the direction of the court to the parties to proceed to substitute the lost and absent document. Peebles v. Miles, 189 Miss. 623, 198 So. 29, 1940 Miss. LEXIS 130 (Miss. 1940).

RESEARCH REFERENCES

ALR.

Proof of due execution of lost will. 41 A.L.R.2d 393.

Sufficiency of evidence of nonrevocation of lost will where codicil survives. 84 A.L.R.4th 531.

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 20–22 et seq.

CJS.

54 C.J.S., Lost Instruments §§ 8-10.

§ 25-55-11. In pending suits.

If the record lost, destroyed, or stolen be that of a pending suit, or a part thereof, process on the petition for its substitution may be returnable on any day of a term of court, and it may be served on the attorney of the party defendant to the petition; but in such case the plaintiff or complainant, if he so elect, may bring another suit on the same cause of action.

HISTORY:

Codes, 1892, § 2795; 1906, § 3175; Hemingway's 1917, § 2516; 1930, § 2336; 1942, § 766.

Cross References —

Custody of trial exhibits and making of transcript, see §§ 9-13-27 et seq.

JUDICIAL DECISIONS

1. In general.

Refusal of leave to reconstitute a withdrawn and lost portion of a pleading is permissible where the chancellor is authorized to proceed in the absence of such withdrawn portion. Logue v. Logue, 234 Miss. 394, 106 So. 2d 498, 1958 Miss. LEXIS 509 (Miss. 1958).

Surety on replevin bond was not entitled to notice of the fact of loss of the bond in proceedings for its substitution or re-establishment under this section and Code 1942, § 767. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

Where the loss of a part of the note sued upon was not shown to have been discovered until during the progress of the trial in the county court, and the proof disclosed that the attorney for the plaintiff had correctly copied the original note as a part of the declaration in the case, admission of the note was not objectionable on the ground that defendant had no notice that the plaintiff would undertake to substitute or supply the part of the record which had been lost or destroyed, in view of the statute providing for substitution of record, or any part thereof, loss of which is first discovered during the progress of a trial, without any other notice than the direction of the court to the parties to proceed to substitute the lost and absent document. Peebles v. Miles, 189 Miss. 623, 198 So. 29, 1940 Miss. LEXIS 130 (Miss. 1940).

The power to restore its records is inherent in all courts of record. Bowman v. McLaughlin, 45 Miss. 461, 1871 Miss. LEXIS 96 (Miss. 1871); Welch v. Smith, 65 Miss. 394, 4 So. 340, 1888 Miss. LEXIS 6 (Miss. 1888).

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 20–22 et seq.

CJS.

54 C.J.S., Lost Instruments §§ 3-7.

§ 25-55-13. Loss first discovered during trial.

If the loss or absence of the record, or any part thereof, be first discovered during the progress of a trial, the cause may be proceeded with notwithstanding the loss; but if a substitute therefor be essential, the trial may be suspended temporarily, and the record or instrument substituted at once, without any other notice than the direction of the court to the parties to proceed to substitute the lost and absent document.

HISTORY:

Codes, 1892, § 2796; 1906, § 3176; Hemingway's 1917, § 2517; 1930, § 2337; 1942, § 767.

JUDICIAL DECISIONS

1. In general.

Refusal of leave to reconstitute a withdrawn and lost portion of a pleading is permissible where the chancellor is authorized to proceed in the absence of such withdrawn portion. Logue v. Logue, 234 Miss. 394, 106 So. 2d 498, 1958 Miss. LEXIS 509 (Miss. 1958).

Surety on replevin bond was not entitled to notice of the fact of loss of the replevin bond and proceedings for its substitution or re-establishment under this section and Code 1942, § 766. Calcote v. May, 207 Miss. 547, 42 So. 2d 742, 1949 Miss. LEXIS 363 (Miss. 1949).

Where the loss of a part of the note sued upon was not shown to have been discovered until during the progress of the trial in the county court, and the proof disclosed that the attorney for the plaintiff had correctly copied the original note as a part of the declaration in the case, admission of the note was not objectionable on the ground that defendant had no notice that the plaintiff would undertake to substitute or supply the part of the record which had been lost or destroyed, in view of the statute providing for substitution of record, or any part thereof, loss of which is first discovered during the progress of a trial, without any other notice than the direction of the court to the parties to proceed to substitute the lost and absent document. Peebles v. Miles, 189 Miss. 623, 198 So. 29, 1940 Miss. LEXIS 130 (Miss. 1940).

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 20–22 et seq.

CJS.

54 C.J.S., Lost Instruments §§ 3-7.

§ 25-55-15. Assessment rolls.

When the assessment rolls of a county, or either of them, shall be stolen, lost, or destroyed, it shall be the duty of the board of supervisors to obtain certified copies thereof from the office of the state tax commission or the proper custodian thereof, and to pay for the same out of the county treasury. If the assessment have been so recently made that copies thereof are not on file in the auditor's office, then the assessment roll or rolls of the county used the preceding year shall be in force and, if necessary, copies thereof shall in like manner be obtained, and the taxes of the current year collected thereon; but in such case new assessments shall be made for the following year.

HISTORY:

Codes, 1892, § 2797; 1906, § 3177; Hemingway's 1917, § 2518; 1930, § 2338; 1942, § 768.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Penalty against clerk for failure to make copies of assessment rolls, see § 27-35-125.

Making of duplicate assessment roll by board of supervisors upon destruction of original, see § 27-35-141.

JUDICIAL DECISIONS

1. In general.

Where land assessment rolls which had been equalized and approved were destroyed in court house fire prior to filing of a copy thereof with the state tax commission and no copy of the rolls was left in existence, notice of special meeting of board of supervisors to consider "the matter of assessment rolls" did not constitute sufficient notice to property owners that reassessment would be ordered at that meeting so that such reassessment, as so ordered, and tax sales held thereunder were void, where the reassessment was equalized at a subsequent meeting without having been designated by the board as the time for such equalization, and approved at a later special meeting, without proper notice to the taxpayers as to what was to be done at either the meeting at which the reassessment was equalized or the meeting at which the objections could be heard and the rolls approved. State v. Butler, 197 Miss. 218, 21 So. 2d 650, 1945 Miss. LEXIS 287 (Miss. 1945).

§ 25-55-17. Records of board of supervisors.

The board of supervisors shall have power to re-establish any of its records that may be lost, destroyed, or stolen, in the same manner as other courts. It may, of its own motion and without petition or process, re-establish any levy for taxes or other public or legislative matter and make the same of record; and in all proceedings thereafter in respect thereto the same shall be conclusively presumed to have been correctly re-established, except in respect to rights which may have accrued before the order of re-establishment and, as to such rights, the same shall be prima facie correct.

HISTORY:

Codes, 1892, § 2798; 1906, § 3178; Hemingway's 1917, § 2519; 1930, § 2339; 1942, § 769.

Cross References —

Duty of clerk of board of supervisors to maintain records, see § 19-3-27.

Maintenance of records by board of supervisors, see §§ 19-15-1 et seq.

Duty of board of supervisors to provide new record books and copies thereof, see § 19-15-9.

Levy of county taxes, see § 27-39-317.

§ 25-55-19. State, county, town, or levee board bonds or warrants.

Whenever any outstanding bond or warrant of this state or any county, city, town, village, or levee board shall become so far mutilated as to be unfit for circulation, or shall be lost or destroyed, a duplicate thereof may be issued by the officer authorized by law to issue such bonds or warrants, under the regulations and restrictions prescribed in the next section.

HISTORY:
Codes, 1892, § 2799; 1906, § 3179; Hemingway's 1917, § 2520; 1930, § 2340; 1942, § 770.

Cross References —
Requirement that state treasurer pay or receive money only on warrant or certificate of Executive Director of the Department of Finance and Administration, see § 7-9-13.

Registration of warrants by state treasurer, see § 7-9-15.

Issuance of county bonds and notes, see §§ 19-9-1 et seq.

Registration and payment of county warrants, see § 19-13-45.

Issuance of municipal warrants, see § 21-39-13.

Provisions relative to presentation of photocopy of lost or destroyed warrant, see § 25-55-28.

RESEARCH REFERENCES

CJS.
54 C.J.S., Lost Instruments §§ 3-7.

§ 25-55-21. Content of duplicate bond or warrant.

Such duplicate shall correspond in number, date, amount, and unpaid coupons, if any, with the original bond or warrant, and shall in all respects be a copy thereof, and shall have indorsed on its face the word "duplicate," together with the date of its issuance.

HISTORY:
Codes, 1892, § 2800; 1906, § 3180; Hemingway's 1917, § 2521; 1930, § 2341; 1942, § 771.

Cross References —
Power to issue duplicate, see § 25-55-19.

Provisions relative to presentation of photocopy of lost or destroyed warrant, see § 25-55-28.

RESEARCH REFERENCES

CJS.
54 C.J.S., Lost Instruments §§ 3-7.

§ 25-55-23. Duplicate for mutilated original.

A duplicate shall not be issued for a mutilated bond or warrant until the original shall be delivered to such officer, and not until an examination has been made by such officer and the treasurer on whom it may be drawn, or who is to pay the same, to see if it be genuine and have not been already paid. If genuine and not previously paid, the duplicate may issue upon the cancellation of the original and the entry of a statement of facts on the proper record or registry of its issuance, with the words "pay duplicate only."

HISTORY:
Codes, 1892, § 2801; 1906, § 3181; Hemingway's 1917, § 2522; 1930, § 2342; 1942, § 772.

Cross References —
Power to issue duplicates, see § 25-55-19.

Provisions relative to presentation of photocopy of lost or destroyed warrant, see § 25-55-28.

RESEARCH REFERENCES

ALR.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense. 75 A.L.R.4th 1067.

CJS.

54 C.J.S., Lost Instruments §§ 8-10.

§ 25-55-25. Duplicate for lost or destroyed original.

(1) A duplicate for a lost or destroyed bond shall not issue until there shall have been filed with the officer an affidavit and a bond. The affidavit must be that of some credible person knowing the facts, and it must set forth the ownership of such bond, the number of unpaid coupons, if any, thereto attached, and the description thereof, embracing, if can be, its number, to whom and for what issued, its date, and when mature. The bond must be that of a person to whom the duplicate is to be issued, with at least two (2) sufficient sureties, in a sum equal to double the amount of the lost, destroyed or stolen bond, payable to the state, conditioned to pay all damages which the state, county, city, town, or levee board, as the case may be, may sustain if compelled to pay such bond or coupons, together with all costs and expenses and lawyers' fees, if any, incurred in enforcing the bond.

(2) A duplicate for a lost or destroyed warrant shall not issue until there shall have been filed with the officer an affidavit. The affidavit must be that of some credible person knowing the facts, and it must set forth the ownership of such warrant and the description thereof, embracing, if can be, its number, to whom and for what issued, and its date.

HISTORY:

Codes, 1892, § 2802; 1906, § 3182; Hemingway's 1917, § 2523; 1930, § 2343; 1942, § 773; Laws, 2004, ch. 312, § 1, eff from and after July 1, 2004.

Cross References —

Provisions relative to presentation of photocopy of lost or destroyed warrant, see § 25-55-28.

OPINIONS OF THE ATTORNEY GENERAL

The provisions of the statute are mandatory, and a county may not issue a duplicate or replacement warrant for one which was mailed but never received without requiring from the payee the affidavit and bond the statute. 1998 Miss. Op. Att'y Gen. 769.

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 4, 6, 7.

17 Am. Jur. Pl and Pr Forms (Rev), Lost and Destroyed Instruments, Form 18 (affidavit of loss of public security).

17 Am. Jur. Pl and Pr Forms (Rev), Lost and Destroyed Instruments, Form 19 (bond for indemnity against loss from issuance of duplicate warrant).

12A Am. Jur. Legal Forms 2d, Lost and Destroyed Instruments §§ 169:13-169:15 (affidavit of loss).

§ 25-55-27. Officer issuing duplicates of bonds and warrants to keep records and preserve indemnity bonds and affidavits.

(1) Any officer issuing duplicates of bonds shall keep a record showing:

(a) The numbers, dates and amounts of such mutilated, lost or destroyed bonds and of the coupons thereto attached;

(b) The date of the issuance of the duplicate;

(c) The name of the person to whom the duplicate was issued; and

(d) The name of the sureties and penalty of the indemnity bond, if a bond is required.

The officer issuing duplicates of bonds shall preserve the bond and affidavit taken in each case.

(2) Any officer issuing duplicates of warrants shall keep a record showing:

(a) The numbers, dates and amounts of such mutilated, lost, or destroyed warrants;

(b) The date of issuance of the duplicate; and

(c) The name of the person to whom issued.

The officer issuing duplicates of warrants shall preserve the affidavit taken in each case.

HISTORY:

Codes, 1892, § 2803; 1906, § 3183; Hemingway's 1917, § 2524; 1930, 2345; 1942, § 774; Laws, 2004, ch. 312, § 2, eff from and after July 1, 2004.

Cross References —

Provisions relative to presentation of photocopy of lost or destroyed warrant, see § 25-55-28.

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 4, 6, 7.

§ 25-55-28. Presentation of photocopy of state warrant where original has been lost or destroyed.

When a state warrant has been lost or destroyed before having been paid by the State Treasurer, and a photocopy of such warrant is presented for payment to the State Treasurer by a qualified state depository bank or a Federal Reserve bank, a duplicate warrant need not be issued in order for payment to be made. The State Treasurer may treat the photocopy as the warrant or certificate of the State Auditor or State Fiscal Management Board issued pursuant to law and may pay the same, provided the photocopy is presented in accordance with applicable Federal Reserve Board rules and such regulations as the State Treasurer may prescribe.

HISTORY:

Laws, 1985, ch. 343, eff from and after July 1, 1985.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References —

Authorization to issue duplicate warrant, see § 25-55-19.

Content of duplicate bond or warrant, see § 25-55-21.

Issuance of duplicate for mutilated original, see § 25-55-23.

Issuance of duplicate for lost or destroyed original, see § 25-55-25.

Preservation of bonds and affidavits taken in exchange for issuance of duplicate warrants, see § 25-55-27.

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Lost and Destroyed Instruments §§ 29–41 et seq.

§ 25-55-29. Registration and poll-books.

The mutilation, loss, or destruction of the registration or poll-books in any county shall be remedied as provided in the chapter on "Registration and Elections."

HISTORY:

Codes, 1892, § 2804; 1906, § 3184; Hemingway's 1917, § 2525; 1930, § 2345; 1942, § 775.

Cross References —

New registration when county registration books are lost or destroyed, see § 23-15-121.

Form of poll-book, see §§ 23-15-125 et seq.

§ 25-55-31. Proceedings to perfect record.

A lost, stolen, or destroyed record shall not constitute constructive notice longer than three (3) years from the loss, theft, or destruction thereof, unless within that time the instrument shall be again placed on the record, or proceedings be begun to perfect the record. In all cases where the record of any instrument affecting the title, lien, or interest in real estate is lost or destroyed by tornado, fire, or otherwise, any person claiming to be the owner of or having a legal interest in or title to any real estate described in or affected by said lost or destroyed record may file his petition to the chancery court of the county in which the record has been lost or destroyed, setting forth a description of the land involved, with a statement of petitioner's claim and the nature thereof, the names, places of residence, and post-office addresses of all persons known to the petitioner to have or claim any interest in land by virtue of such lost or destroyed record or having a recordable instrument affecting the title to such land described in or affected by the lost or destroyed instrument or instruments, and giving in clear and succinct language petitioner's claim to or ownership of the land involved, with a prayer that summons be issued and served on all persons named as defendants, whether resident or nonresident. Upon the filing of such petition, the clerk of the chancery court shall issue summons for the defendants as in other cases in equity, returnable at a day not less than four (4) weeks nor more than eight (8) weeks from such filing, and requiring all defendants to appear and plead, answer, or demur to the petition.

When the summons has been personally served upon the resident defendants not less than five (5) days before the return-day and proof of publication has been made for any nonresident defendants, as now required by law, and no one of the named defendants appears and contests the petition, then the chancery court or presiding chancellor, either in term time or vacation, may forthwith hear said petition, adjudicate the sufficiency of process, render any and all necessary decrees pro confesso and enter a final decree or decrees disposing of said petition. If any defendant appears and contests the petition, the chancery clerk shall promptly notify the chancellor of the district in writing of the pendency of said petition and the contest thereon, and the chancellor shall then notify the chancery clerk to set the matter for hearing at some future date not less than ten (10) days thereafter. The clerk shall give the parties or their solicitors of record not less than five (5) days' notice by letter addressed to the parties or their solicitors, advising that the matter will be heard on the day named, and on the day set for the hearing the chancellor shall hear and determine the controversy as other suits in chancery and enter a decree in accordance with his finding. The chancellor may by his final decree adjudicate the execution of any lost or destroyed or stolen instruments involved in the proceeding, and may order the final decree recorded as provided by law in other cases affecting land titles.

HISTORY:

Codes, 1892, § 2805; 1906, § 3185; Hemingway's 1917, § 2526; 1930, § 2346; 1942, § 776; Laws, 1924, ch. 242.

Cross References —

Bill in chancery to confirm title, see § 11-17-29.

Confirmation of titles to land, see § 11-17-29.

Bill in chancery to remove cloud upon title, see § 11-17-31.

Recording notice of suit affecting real estate, see § 11-47-3.

Issuance of replacement license to practice medicine, see § 73-25-15.

Provision that conveyances and mortgages are void if not lodged for record, see § 89-5-3.

Recording written contracts in relation to land, see § 89-5-7.

JUDICIAL DECISIONS

1. In general.

Where a vendor brought an action to obtain purchasers' execution of a new note and a deed of trust for a lost one and to obtain a lien for balance of indebtedness then due on land conveyed, this action could have properly been tried by chancellor in term time and the chancellor was without authority to try the case and enter final decree for the vendor in vacation in view of the fact that since the deed of trust had not been recorded, there was no constructive notice to be restored, restoration of constructive notice was the object of the statute. Hood v. Lamar, 219 Miss. 349, 68 So. 2d 456, 1953 Miss. LEXIS 395 (Miss. 1953).

A proceeding by landowners in a drainage district to have the district declared illegal and dissolved was not maintainable on the ground that fraud had been practiced in procuring the signatures of some of the landowners to the waiver of process in proceedings under this section, in the absence of a charge in the bill, of the facts relied on as constituting fraud. Vanlandingham v. Meridian Creek Drainage Dist., 191 Miss. 345, 2 So. 2d 591, 1941 Miss. LEXIS 143 (Miss. 1941).

Where landowners in a drainage district delayed for twenty years before bringing suit against the district and bondholders to have the district declared illegal, void, and dissolved, and the Chancery Court conducting the proceeding had jurisdiction of the parties and the subject matter, the long delay, under the facts and circumstances, precluded the landowners from relief, and the fact that statutory proceedings had been instituted about nine years previously to re-establish the district organization records, which had been destroyed by fire, had no bearing on the question of laches, and such proceedings neither validated nor invalidated the lost records. Vanlandingham v. Meridian Creek Drainage Dist., 191 Miss. 345, 2 So. 2d 591, 1941 Miss. LEXIS 143 (Miss. 1941).

The object of this statute is to restore constructive notice. Vanlandingham v. Meridian Creek Drainage Dist., 191 Miss. 345, 2 So. 2d 591, 1941 Miss. LEXIS 143 (Miss. 1941).

Since adverse possession for the statutory period is of itself at least constructive notice of title, and since such title may not be divested by individual action except by transfer from the holder or loss by subsequent and superseding adverse occupancy, the proceedings by which a defendant's predecessor in title sought to establish his record title under the statute, all existing records having been destroyed by fire, did not affect the complainant's outstanding title by adverse possession, especially since he was not made a party to such proceedings. Shepherd v. Cox, 191 Miss. 715, 1 So. 2d 495, 4 So. 2d 217, 1941 Miss. LEXIS 112 (Miss. 1941).

This section, first enacted in 1892, did not operate retrospectively, except that a record lost, stolen, or destroyed prior to that time is made to cease to constitute constructive notice three years from the time the statute became operative, unless restored; and, for those subsequently lost such notice is made to cease three years from the time of loss, unless restored. Myers v. Viverett, 110 Miss. 334, 70 So. 449, 1915 Miss. LEXIS 45 (Miss. 1915).

CHAPTER 57.

DESTRUCTION OF RECORDS [REPEALED]

Sec.
25-57-1 through 25-57-9. Repealed.

§§ 25-57-1 through 25-57-9. Repealed.

Repealed by Laws, 1981, ch. 501, § 27, eff from and after July 1, 1981.

§ 25-57-1. [Codes, 1942, § 4065.7-01; Laws, 1966, ch. 554, § 1]

§ 25-57-3. [Codes, 1942, § 4065.7-02; Laws, 1966, ch. 554, § 2]

§ 25-57-5. [Codes, 1942, § 4065.7-03; Laws, 1966, ch. 554, § 3]

§ 25-57-7. [Codes, 1942, § 4065.7-05; Laws, 1966, ch. 554, § 5]

§ 25-57-9. [Codes, 1942, § 4065.7-06; Laws, 1966, ch. 554, § 6; 1978, ch. 458, § 26]

Editor's Notes —

Former Section 25-57-1 authorized certain department heads to destroy records under their supervision.

Former § 25-57-3 required that certain department heads furnish a written statement of records necessary to preserve.

Former § 25-57-5 required notification of department of archives and history of records or documents to be destroyed and an opportunity for inspection and examination.

Former § 25-57-7 pertained to the confidentiality of reproduced records or documents.

Former § 25-57-9 withheld from the Secretary of State authority to destroy state land office records upon succeeding to the function of that office.

CHAPTER 58.

GEOGRAPHIC INFORMATION SYSTEM

In General. 25-58-1
Remote Sensing and Geographic Information Systems. 25-58-21

IN GENERAL

Sec.
25-58-1. Definitions; boards of supervisors authorized to create geographic information system and prepare multipurpose cadastre.
25-58-3. Borrowing money to create geographic information system and to prepare multipurpose cadastre.

§ 25-58-1. Definitions; boards of supervisors authorized to create geographic information system and prepare multipurpose cadastre.

(1) For the purposes of this section, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Geographic information system" means a computerized, spatial coordinate mapping and relational data base technology which (i) captures, assembles, stores, converts, manages, analyzes, amalgamates and records, in the digital mode, all kinds and types of information and data; (ii) transforms such information and data into intelligence; and subsequently (iii) retrieves, presents and distributes that intelligence to a user for use in making the intelligent decisions necessary for sound management of private or political affairs.

(b) "Data base" means a collection of available information and data assembled into electronic files for efficient and timely management of county and municipal affairs and functions and the exercise of the powers, duties and responsibilities placed upon the governing authorities of a county or municipality by Mississippi law and the Mississippi Constitution.

(c) "Multipurpose cadastre" means a uniformly accepted base map registered to the Mississippi State Plane Coordinate System and depicting boundaries of all public properties.

(d) "Mississippi State Plane Coordinate System" means the system of plane rectangular coordinates established by the National Geodetic Survey which system is further identified as North American Datum (NAD) 1983.

(2) The board of supervisors of any county and the governing authorities of any municipality are hereby authorized and empowered, in their discretion, to do all things necessary and desirable to create a geographic information system for the county or municipality, as appropriate. Data bases for such a system shall be created under the direct supervision of persons who are experienced in and possess a demonstrated knowledge of the preparation of geographic information systems and of the data bases and the other requirements and activities related thereto.

(3) The board of supervisors of any county and the governing authorities of any municipality are further authorized and empowered, in their discretion, to prepare, or have prepared, a multipurpose cadastre registered to the accuracy standards promulgated by the Federal Geodetic Control Committee established under the provisions of the United States Office of Management and Budget Memoranda A-16.

HISTORY:

Laws, 1990, ch. 555, § 1; Laws, 2012, ch. 426, § 1, eff from and after July 1, 2012.

Cross References —

Central Data Processing Authority [Mississippi Department of Information Technology Services], see § 25-53-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

If aerial photographs of a portion of a county are to be a part of the county GIS system, those photographs can only be acquired by the county by bid with approval by the Mississippi Department of Information & Technology Services, the successor to the Mississippi Central Data Processing Authority. 2002 Miss. Op. Att'y Gen. 67.

§ 25-58-3. Borrowing money to create geographic information system and to prepare multipurpose cadastre.

(1) The board of supervisors of any county and the governing authorities of any municipality (both referred to in this section as "governing authority") are hereby authorized and empowered, in their discretion, to borrow money, pursuant to the provisions of this section to create the geographic information system and prepare the multipurpose cadastre authorized in Section 25-58-1.

(2) Before any money is borrowed under the provisions of this section, the governing authority shall adopt a resolution declaring the necessity for such borrowing and specifying the purpose for which the money borrowed is to be expended, the amount to be borrowed, the date or dates of the maturity thereof, and how such indebtedness is to be evidenced. The resolution shall be certified over the signature of the head of the governing authority.

(3) The borrowing shall be evidenced by negotiable notes or certificates of indebtedness of the governing authority which shall be signed by the principal officer and clerk of such governing authority. All such notes or certificates of indebtedness shall be offered at public sale by the governing authority after not less than ten (10) days' advertising in a newspaper having general circulation within the governing authority. Each sale shall be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the governing authority; however, the rate of interest shall not exceed that now or hereafter authorized in Section 75-17-101, Mississippi Code of 1972. No such notes or certificates of indebtedness shall be issued and sold for less than par and accrued interest. All notes or certificates of indebtedness shall mature in approximately equal installments of principal and interest over a period not to exceed ten (10) years from the dates of the issuance thereof. Principal shall be payable annually, and interest shall be payable annually or semiannually; provided, however, that the first payment of principal or

interest may be for any period not exceeding one (1) year. Provided, however, if negotiable notes are outstanding from not more than one (1) previous issue authorized under the provisions of this section, then the schedule of payments for a new or supplementary issue may be so adjusted that the schedule of maturities of all notes or series of notes hereunder shall, when combined, mature in approximately equal installments of principal and interest over a period of ten (10) years from the date of the new or supplementary issue, or if a lower interest rate will thereby be secured on notes previously issued and outstanding, a portion of the proceeds of any issue authorized hereunder may be used to refund the balance of the indebtedness previously issued under the authority of this article. Such notes or certificates of indebtedness shall be issued in such form and in such denominations as may be determined by the governing authority and may be made payable at the office of any bank or trust company selected by the governing authority. In such case, funds for the payment of principal and interest due thereon shall be provided in the same manner provided by law for the payment of the principal and interest due on bonds issued by the governing authority.

(4) For the prompt payment of notes or certificates of indebtedness at maturity, both principal and interest, the full faith, credit and resources of the issuing entity are pledged. Furthermore, the governing authority may annually levy a special tax in an amount not to exceed three (3) mills upon all of its taxable property, the avails of which shall be paid into a sinking fund and used exclusively for the payment of principal of and interest on the notes or certificates of indebtedness. Until needed for expenditure, monies in the sinking fund may be invested in the same manner as the governing authority is elsewhere authorized by law to invest surplus funds.

(5) The proceeds of any notes or certificates of indebtedness issued under the provisions of this section shall be placed in a special fund and shall be expended only for the purpose or purposes for which they were issued as shown by the resolution authorizing the issuance thereof. If a balance shall remain of the proceeds of such notes or certificates of indebtedness after the purpose or purposes for which they were issued shall have been accomplished, such balance shall be used to pay such obligations at or before maturity and may be transferred to any sinking fund previously established for the payment thereof.

(6) Proceeds from the sale of notes or certificates of indebtedness not immediately necessary for expenditure shall be invested in the same manner as surplus funds of the governing authority may be invested.

(7) Regardless of the method of paying for the creation of a geographic information system or for the preparation of a multipurpose cadastre, and notwithstanding anything in the Mississippi Public Records Act Section 25-61-1 et seq., to the contrary, a county or municipality which has created or acquired a geographic information system or prepared a multipurpose cadastre may assess a fee or charge in accordance with the provisions of Section 25-61-7(2). However, all fees shall be subject to a standard scale adopted by the governing authority. If the governing authority has issued notes or certificates

of indebtedness, any fees shall be deposited into the sinking fund and used exclusively for payment of principal and interest on the notes or certificates of indebtedness until paid in full. Thereafter, the fees shall be deposited into the county's or municipality's general fund.

HISTORY:

Laws, 1990, ch. 555, § 2; Laws, 1999, ch. 466, § 1, eff from and after July 1, 1999.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference in (1) to "Section 25-28-1" was changed to "Section 25-58-1." The Joint Committee ratified the correction at its May 16, 2002, meeting.

OPINIONS OF THE ATTORNEY GENERAL

How fees shall be calculated is matter for the board of supervisors to address; however the board must make factual determinations regarding each statutorily authorized factor used in determining the standard fee scale and have those determinations recorded in the minutes. 2005 Miss. Op. Att'y Gen. 612.

REMOTE SENSING AND GEOGRAPHIC INFORMATION SYSTEMS

Sec.
25-58-21. Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems established; duties and responsibilities; composition of membership; terms; compensation; funding; staff.

§ 25-58-21. Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems established; duties and responsibilities; composition of membership; terms; compensation; funding; staff.

(1) There is established the Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems, hereinafter referred to as the "council." The council shall set and assure enforcement of policies and standards to make it easier for remote sensing and geographic information system users around the state to share information and to facilitate cost-sharing arrangements to reduce the costs of acquiring remote sensing and geographic information system data. The council shall not oversee or regulate the activities of higher education entities where it relates to the fields of teaching or research; however, the council shall be informed of these activities for the purpose of coordinating these higher education activities with other public remote sensing and GIS initiatives to achieve the maximum benefit for the State of Mississippi and its taxpayers. The council's responsibilities include, but are not limited to:

(a) Coordination of remote sensing and geographic information system activities within Mississippi;

(b) Establishing policies and standards to guide Mississippi Department of Information Technology Services (MDITS) in the review and approval of state and local government procurement of both hardware and software development relating to remote sensing and geographic information systems;

(c) Oversight of MDITS' implementation of these responsibilities;

(d) Preparing a plan, with proposed state funding priorities, for Mississippi's remote sensing and geographic information system activities, including development, operation and maintenance of the Mississippi Digital Earth Model;

(e) Oversight of the Mississippi Department of Environmental Quality's development and maintenance of the Mississippi Digital Earth Model, including establishing policies and standards for the procurement of remote sensing and geographic information system data by state and local governmental entities and establishing the order in which the seven (7) core data layers shall be developed;

(f) Designating Mississippi's official representative to the National States Geographic Information Council and to any other national or regional remote sensing or geographical information system organizations on which Mississippi has an official seat;

(g) Establishing and designating the members of an advisory committee made up of policy level officials from major state, local, regional and federal agencies, including, but not limited to, the National Association of Space Administration, the Mississippi Institute for Forestry Inventory, the Mississippi Department of Wildlife, Fisheries and Parks, the Mississippi Public Utilities Staff, the Department of Marine Resources, the county E911 coordinator, the State Health Officer, the Commissioner of Agriculture and Commerce, the State Tax Commission, the Council of Consulting Engineers and the Mississippi Band of Choctaw Indians, as well as members of the private sector;

(h) Creating a staff level technical users committee, in which any public or private sector entity in Mississippi interested in remote sensing and geographic information may be allowed to participate;

(i) Coordinating with the State Tax Commission to assure that state and local governmental entities do not have to comply with two (2) sets of requirements imposed by different organizations.

(2) The Mississippi Coordinating Council for Remote Sensing and Geographic Information Systems will be composed of the following members:

(a) The Executive Director of the Mississippi Department of Environmental Quality;

(b) The Executive Director of the Mississippi Department of Information Technology Services;

(c) The Executive Director of the Mississippi Department of Transportation;

(d) The Executive Director of the Mississippi Emergency Management Agency;

(e) The Executive Director of the Mississippi Development Authority;

(f) The Secretary of State;

(g) The Executive Director of the Mississippi Forestry Commission;

(h) The Director of the Mississippi State Board of Registered Professional Geologists;

(i) A representative from the Institutions of Higher Learning, appointed by the Commissioner of the Institutions of Higher Learning;

(j) One (1) mayor, serving a municipality, appointed by the Executive Director of the Mississippi Municipal League;

(k) The Executive Director of the Mississippi Municipal League or his designee who will serve as the member;

(*l*) One (1) county supervisor appointed by the Executive Director of the Mississippi Association of Supervisors;

(m) The Executive Director of the Mississippi Association of Supervisors or his designee who will serve as the member;

(n) A member of the Tax Assessors/Collectors Association or the executive director of the association, to be appointed by the president of that association;

(o) A representative of the Planning and Development Districts, appointed by the Governor;

(p) A Senator, as a nonvoting member, appointed by the Lieutenant Governor;

(q) A Representative, as a nonvoting member, appointed by the Speaker of the House;

(r) A county surveyor who is a member of the Mississippi Association of Professional Surveyors, appointed by the president of the association; and

The members listed in paragraphs (a) through (g) may appoint a designee, but the designee must be the head of an office, bureau, division or branch within the member's agency.

The members of the council shall serve for a term concurrent with their service as an elected or appointed official or concurrent with the term of the appointing official.

The Executive Director of the Department of Environmental Quality shall serve as council chair and the Executive Director of Information Technology Services as vice chair for the first two (2) years. After the first two (2) years, the council shall elect from its members a chair and vice chair, for terms to be specified by the council.

With regard to the designee chosen by the Executive Director of the Mississippi Municipal League or the Executive Director of the Mississippi Association of Supervisors, the designee shall become a permanent member of the council for a term concurrent with the term of the appointing executive director.

(3) At the direction of the chairman of the council and contingent upon the availability of sufficient funds, each member may receive reimbursement for reasonable expenses, including travel expenses in accordance with rates established pursuant to Section 25-3-41, incurred in attending meetings of the council. Any member of the council who is also a state employee may not receive per diem compensation for attending meetings of the study committee, but may be reimbursed in accordance with Section 25-3-41 for mileage and

actual expenses incurred in the performance of the duties, if authorized by vote, at a meeting of the council, which action must be recorded in the official minutes of the meeting. Legislative members of the council will be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session.

(4) The council may accept money from any source, public or private, to be expended in implementing the duties under this section.

(5) The council may utilize staff employed by the agencies affected by this section and any other assistance made available to it.

HISTORY:

Laws, 2003, ch. 527, § 1; Laws, 2006, ch. 544, § 1; Laws, 2009, ch. 307, § 1; brought forward without change, Laws, 2012, ch. 426, § 2, eff from and after July 1, 2012.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References —

Powers, duties and responsibilities of the Mississippi Department of Information Technology Services, see § 25-53-5.

Commission on Environmental Quality – powers and duties, see § 49-2-9.

CHAPTER 59.

ARCHIVES AND RECORDS MANAGEMENT

Sec.
25-59-1. Short title.
25-59-3. Definitions.
25-59-5. Department of archives and history to be archival and records management agency.
25-59-7. State records committee; duties as to records control schedules.
25-59-9. Powers and duties of department of archives and history.
25-59-11. Transfer of responsibility and title from central records storage facility to state records center.
25-59-13. Procedures for transfer of records to the department of archives and history.
25-59-15. Records management duties of state agencies and officials.
25-59-17. Record control schedules for courts; destruction of court records.
25-59-19. Records to be public property.
25-59-21. Consent of director required for disposal of public records; rules and regulations.
25-59-23. Penalties for offenses involving records.
25-59-25. Limitation on personal liability; closed or restricted records; compliance with requirements as to location for keeping records.
25-59-27. Records to be open for public use; exceptions; disposal of closed and restricted records.
25-59-29. Reproduction of records and storage of copies; destruction of originals.
25-59-31. Transition from existing program of reproduction and destruction of records.

§ 25-59-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Archives and Records Management Law of 1981."

HISTORY:
Laws, 1981, ch. 501, § 1, eff from and after July 1, 1981.

§ 25-59-3. Definitions.

For the purposes of this chapter:

(a) "Department" shall mean the Mississippi Department of Archives and History.

(b) "Public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency or by any appointed or elected official. Books, periodicals and other published material normally found in a library are excluded from this definition.

(c) "State record" shall mean a record which normally is maintained within the custody or control of a state agency or by any appointed or elected state official or any other record which is designated or treated as a state record according to general law.

(d) "Vital record" shall mean any record vital to the resumption of the legal and financial status of government in the state or to the protection and fulfillment of obligations to the citizens of the state of Mississippi.

(e) "Agency" shall mean any state office, department, division, board, bureau, commission, institution of higher learning or other separate unit or institution of state government created or established by law.

(f) "Mississippi State Archives" shall mean an establishment maintained by the department for the preservation of those public records and other documentary materials that have been determined by the department to have sufficient historical or other enduring value to warrant their continued preservation by the state and that have been accepted by the department for deposit in its custody.

(g) "Records center" shall mean an establishment maintained by the department primarily for the processing, servicing and security of public records that must be retained for varying periods of time but need not be retained in an agency's office, equipment or space.

(h) "Records control schedule" shall mean a set of instructions prescribing how long, where or in what form records shall be kept.

(i) "Records management" shall mean the application of management techniques to the creation, utilization, maintenance, retention, preservation and disposal of records undertaken to reduce costs and improve efficiency of record-keeping. Records management includes management of filing and microfilm equipment and supplies, filing and information retrieval systems, historical documentation, micrographics, records system scheduling and vital records protection.

(j) "Director" shall mean the director of the Mississippi Department of Archives and History.

(k) "State records committee" shall mean a committee established by this chapter whose duties are to review, approve, disapprove, amend or modify records control schedules submitted by agency heads.

HISTORY:

Laws, 1981, ch. 501, § 2, eff from and after July 1, 1981.

RESEARCH REFERENCES

Am. Jur.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 1 et seq.

§ 25-59-5. Department of archives and history to be archival and records management agency.

The archival and records management agency of the state of Mississippi shall be the Mississippi Department of Archives and History.

HISTORY:

Laws, 1981, ch. 501, § 3, eff from and after July 1, 1981.

Cross References —

Department of archives and history, generally, see §§ 39-5-1 et seq.

§ 25-59-7. State records committee; duties as to records control schedules.

There is hereby created the state records committee to be composed of the governor, state registrar of vital records, state auditor of public accounts, secretary of state and the director of the department of archives and history, or their designated representatives. It shall be the duty of the committee to review, approve, disapprove, amend or modify records control schedules submitted by agency heads or appointed and elected state officials through the department for the disposition of records based on administrative, legal, fiscal or historical value. Such records control schedules, once approved, shall be authoritative and directive, and shall have the force and effect of law. A records schedule may be determined by three (3) members of the committee. Records control schedules may be amended by the committee on change of program mission, legislative change or other actions affecting the basic mission of the agency and in turn affecting the records. The director of the department shall serve as chairman of the committee and shall schedule meetings of the committee as required. Each agency has the right of appeal to the committee for actions taken.

HISTORY:

Laws, 1981, ch. 501, § 4, eff from and after July 1, 1981.

Editor's Notes —

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 25-59-9. Powers and duties of department of archives and history.

The Mississippi Department of Archives and History, with respect to the Mississippi Archives and Records Management Law, shall have the following powers and duties:

(a) The department may make and enter into contracts and agreements with other agencies, organizations, associations, corporations and individuals or federal agencies as it may determine are necessary, expedient or incidental to the performance of its duties or the execution of its powers under this chapter.

(b) The department shall adopt such rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter, which rules shall be binding on all agencies and the persons affected thereby. The department shall publish said rules and regulations in accordance with the provisions of the Administrative Procedures Act, Sections 25-43-1 et seq., Mississippi Code of 1972.

(c) Conduct a records management program including a records center and subject to the availability of staff and funds, conduct a centralized microfilming program for the benefit of all state agencies; and provide advice, assistance and training to all state agencies in matters pertaining to the economical and efficient management of public records.

(d) Cooperate with and assist, insofar as possible, state institutions, departments, agencies, counties, municipalities and individuals engaged in the field of state archives, manuscripts and history.

(e) Establish safeguards against unauthorized or unlawful removal or loss of records.

(f) Initiate appropriate action to recover records removed unlawfully or without authorization.

(g) Establish and maintain a program in cooperation with each agency for the selection and preservation of vital records considered essential to the operation of government and to the protection of the rights and privileges of citizens; make or have made preservation duplicates, or designate existing copies as preservation duplicates to be preserved in a place of safekeeping as prescribed by the department.

(h) Promulgate rules and regulations permitting the storage, use and dissemination of records which are transferred by any local governmental body in this state to a local historical or archival group which has been incorporated and operates as a private, nonprofit corporation. Such rules and regulations shall be in accordance with the provisions of Section 25-59-25.

HISTORY:

Laws, 1981, ch. 501, § 5; Laws, 1990, ch. 391, § 1, eff from and after July 1, 1990.

Editor's Notes —

The reference in (b) to the provisions of the Administrative Procedures Act, should be to §§ 25-43-1.101 et seq., not §§ 25-43-1 et seq. Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Cross References —

Power of board of trustees of department of records and archives to adopt rules and regulations for public inspection of records, see § 25-59-27.

Powers and duties of the department of archives and history, generally, see §§ 39-5-1, 39-5-5.

RESEARCH REFERENCES

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws § 11.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 1 et seq.

CJS.

76 C.J.S., Records §§ 41-51.

§ 25-59-11. Transfer of responsibility and title from central records storage facility to state records center.

The central records storage facility shall become the state records center. The commission of budget and accounting is hereby authorized to transfer the responsibility for the operation of the facility to the department of archives and history. The commission shall also transfer title to the building, equipment and property associated with the facility to the department.

HISTORY:

Laws, 1981, ch. 501, § 6, eff from and after July 1, 1981.

Cross References —

Procedures for transfer of records to the department of archives and history, see § 25-59-13.

§ 25-59-13. Procedures for transfer of records to the department of archives and history.

The transfer of records to the Mississippi Department of Archives and History shall be in accordance with the following:

(a) Agencies and appointed or elected officials are hereby authorized and empowered to turn over to the department any records no longer in current official use and the department is authorized, after conducting appropriate archival appraisal, to accept such records and to provide for their administration and preservation.

(b) All records of state agencies transferred to the department may be held in the records center or placed directly in the Mississippi State Archives as deemed appropriate.

(c) Title to any record placed in the records center shall remain in the agency transferring such records to the department.

(d) Title to any record transferred to the Mississippi State Archives shall be vested in the department.

(e) The department may make certified copies under seal of any records transferred to it upon the application of any person and said certificates signed by the director shall have the same force and effect as if made by the agency from which the records were received.

(f) The department may prescribe and charge reasonable fees for said services, which shall not be less than the actual cost thereof.

HISTORY:

Laws, 1981, ch. 501, § 7, eff from and after July 1, 1981.

Cross References —

Authorization for state and county officials to turn over to director of department of archives and history all records not currently in use, see § 39-5-11.

§ 25-59-15. Records management duties of state agencies and officials.

It shall be the duty of each state agency and each appointed or elected state official to:

(a) Cooperate with the department in complying with the provisions of this chapter.

(b) Establish and maintain an active and continuing program for the economical and efficient management of records.

(c) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency or office and designed to furnish the information necessary to protect the legal and financial rights of the government and of the persons directly affected by the agency's activities.

(d) Submit to the department for review by the state records committee and in accordance with the rules and regulations of the department, a recommended retention schedule for records in its custody, except schedules for certain types of records common to all agencies or offices which may be established by the department and the state records committee. No records will be scheduled for retention any longer than is absolutely necessary in the performance of the required functions of the agency or office. Records not actively required for the performance of the agency's or official's duties will be transferred to the records center or the Mississippi State Archives in accordance with rules and regulations established by the department. Records which have been identified as archival, or which must be retained permanently, may be transferred directly to the Mississippi State Archives, consistent with the provisions of this chapter.

(e) As of July 1, 1981, state agencies and appointed or elected state officials shall not lease additional space for records storage or renew existing leases for that purpose without approval of the state records committee. Further, with the development of records control schedules, such records now in storage in leased offsite facilities will be removed from them in accordance with the rules and regulations of the department.

(f) Nothing in this chapter shall be construed to divest state agency heads or appointed or elected state officials of the authority to determine the nature and form of records acquired in the administration of their several responsibilities.

HISTORY:

Laws, 1981, ch. 501, § 8, eff from and after July 1, 1981.

Cross References —

State hospital records, reproduction or destruction, see § 41-9-77.

JUDICIAL DECISIONS

1. Copies.

Chancery court erred in finding that the Department of Marine Resources (DMR) violated the Mississippi Litigation Accountability Act because although the chancery court found that DMR was under an affirmative duty to maintain a back up copy of the complete set of records it was charged to keep as a public body, nothing inthe statute required every public record to be backed up with paper or electronic copies. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

RESEARCH REFERENCES

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws §§ 1-11.

CJS.

76 C.J.S., Records §§ 41-51.

§ 25-59-17. Record control schedules for courts; destruction of court records.

The Mississippi Supreme Court may, by rule of the court, provide for the development of records control schedules for the various and several courts in the Mississippi judiciary system, provided that the director of the department of archives and history shall be consulted prior to the destruction of any court records.

The Mississippi Supreme Court may rule that the courts will cooperate with the department in the establishment of records control schedules for the records of the courts.

In the alternative, the courts in the individual counties may cooperate with the board of supervisors in that county in the development of an overall records management program and records control schedules. The director of the department of archives and history shall be consulted prior to the destruction of any county court records. The director shall respond to such requests within sixty (60) days.

The destruction of court records by authorized retention schedules shall not be construed as affecting the status of that court as a court of record.

HISTORY:

Laws, 1981, ch. 501, § 9, eff from and after July 1, 1981.

Cross References —

Present provision for dealing with old records of the Supreme Court, see § 9-3-25.

Rule making power of the Supreme Court, generally, see §§ 9-3-61 et seq.

Destruction of old records in chancery courts, see § 9-5-171.

OPINIONS OF THE ATTORNEY GENERAL

Unless the Supreme Court establishes applicable retention schedules in accordance with Section 25-59-17, before destroying a designated record the chancery clerk must seek and receive an order from the Supreme Court approving its destruction. 2005 Miss. Op. Att'y Gen. 624.

RESEARCH REFERENCES

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws § 11.

§ 25-59-19. Records to be public property.

All records created or received in the performance of public duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

HISTORY:

Laws, 1981, ch. 501, § 10, eff from and after July 1, 1981.

Cross References —

State hospital records, reproduction or destruction, see § 41-9-77.

RESEARCH REFERENCES

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws §§ 17 et seq.

§ 25-59-21. Consent of director required for disposal of public records; rules and regulations.

No person may destroy, sell, loan or otherwise dispose of any public record without the consent of the director. The department shall adopt reasonable rules and regulations, not inconsistent with this chapter, which shall be binding on all state agencies and appointed and elected state officials, relating to the destruction and disposal of records. Such rules and regulations shall include, but not be limited to: procedures for complying and submitting to the department lists and schedules of records proposed for disposal; procedures for the physical destruction or other disposal of records; and standards for the reproduction of records for security and with a view to the disposal of the original record.

HISTORY:

Laws, 1981, ch. 501, § 11, eff from and after July 1, 1981.

Cross References —

Preservation and destruction of records of state fiscal officer, now the executive director of the department of finance and administration, see § 7-7-63.

Destruction of state warrants by treasurer, see § 7-9-32.

Destruction of records of the circuit and county courts, see § 9-7-128.

Filing, preservation and disposition of official acts and assessment rolls of the state tax commission, see § 27-3-61.

Preservation and destruction of income tax reports and returns, see § 27-7-83.

Preservation and destruction of estate tax returns and reports, see § 27-9-55.

Preservation and destruction of reports and returns relative to corporation franchise tax, see § 27-13-57.

State hospital records, reproduction or destruction, see § 41-9-77.

Preservation and destruction of records of the youth court, see § 43-21-265.

Disposal of records of the employment security commission, see § 71-5-129.

Preservation and destruction of the records of the commissioner of insurance, see § 83-1-21.

OPINIONS OF THE ATTORNEY GENERAL

Section 41-9-69 does not regulate the retention of records by county health departments. Section 25-59-21 would govern the retention and destruction of these records. 1995 Miss. Op. Att'y Gen. 674.

As long as any microfilm, computer software or computer optical imaging of voter registration records contain all the basic registration information, as well as the date of registration and the signature of the elector as required by Section 23-15-113, the hard copies of such records may be destroyed. Before destroying any records, the consent of the Director of the Mississippi Department of Archives and History must be gained. 1996 Miss. Op. Att'y Gen. 226.

Exempt counties must obtain the consent of the director of the Department of Archives and History to dispose of county records pursuant to Section 25-59-21. The provisions of Section 25-59-21 are superseded by the provisions of S.B. 2832 with respect to nonexempt local governmental entities. 1996 Miss. Op. Att'y Gen. 341.

Prior to destroying lapsed financing statements, a chancery clerk must obtain the consent of the director of Archives and History and, if the county participates in Local Government Records Committee matters, the consent of the Local Government Records Committee. 1999 Miss. Op. Att'y Gen. 238.

RESEARCH REFERENCES

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws § 11.

§ 25-59-23. Penalties for offenses involving records.

The theft, or deliberate alienation, alteration or destruction of records by any person or persons in a manner not authorized by an applicable records control schedule, or the unlawful divulging of restricted information under this chapter shall constitute a misdemeanor, punishable by a fine of not less than five hundred dollars ($500.00) and not greater than one thousand dollars ($1,000.00).

HISTORY:

Laws, 1981, ch. 501, § 12, eff from and after July 1, 1981.

Cross References —

State hospital records, reproduction or destruction, see § 41-9-77.

Criminal penalty for false entries, alterations or erasures of public records, see § 97-11-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense. 75 A.L.R.4th 1067.

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws §§ 11, 12.

66 Am. Jur. 2d, Records and Recording Laws §§ 46.17, 46.18.

CJS.

76 C.J.S., Records §§ 87-89.

§ 25-59-25. Limitation on personal liability; closed or restricted records; compliance with requirements as to location for keeping records.

(1) No person acting in compliance with the provisions of this chapter shall be held personally liable. If it becomes necessary for archivists or records analysts on the staff of the department to inspect closed or restricted records in order to appraise them for archival significance those archivists or records analysts shall not be held liable under law for such inspection. It shall be unlawful for such archivists or records analysts to divulge any information contained in the closed or restricted records.

(2) Whenever laws and regulations prescribe where a record series must be kept, the custodian of such records shall be considered in compliance with those laws, rules and regulations if he transfers the records to a local holding area, a records center or the Mississippi State Archives when he does so in accordance with an approved records control schedule. All local governmental bodies in this state are hereby authorized and empowered, in their discretion, to transfer records, after the expiration of time when such bodies no longer have to retain the records, to a public library or to a local historical or archival group which has been incorporated and operates as a private, nonprofit corporation. Any local governmental body which desires to transfer records to a local historical or archival group or public library shall have certification from the department prior to the records being transferred indicating that

such entity has satisfied all the rules and regulations of the department and that the department has officially approved such entity as a records depository. The title to all records transferred to any local historical or archival group or public library shall remain in the local governmental body which transfers the records to such entity, and the ultimate authority over the records shall continue to reside with the person charged with the responsibility for making and keeping the records. Any local governmental body may also request certification from the department of the body's own record storage area for records which the body determines to retain in its custody.

HISTORY:

Laws, 1981, ch. 501, § 13; Laws, 1990, ch. 391, § 2; Laws, 1996, ch. 537, § 6, eff from and after July 1, 1996.

Cross References —

Promulgation of rules and regulations by Department of Archives and History, see § 25-59-9.

§ 25-59-27. Records to be open for public use; exceptions; disposal of closed and restricted records.

All records for which title has been transferred to the Mississippi Department of Archives and History shall be open for public use at a reasonable time and place under rules and regulations adopted by the Board of Trustees of the Mississippi Department of Archives and History with the exception of those records specifically prohibited from being opened to inspection by state law, federal law, court order, by contractual agreement with a private third party or by agency request consistent with law. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter, nor shall the definition of public records include those records which it is shown that the public interest is best served by not disclosing to the public. For purposes of records management closed and restricted records may be disposed of in accordance with the provisions of this chapter for the disposal of public records.

HISTORY:

Laws, 1981, ch. 501, § 14; Laws, 1990, ch. 406, § 1, eff from and after July 1, 1990.

Cross References —

Promulgation of rules and regulations by Department of Archives and History, see § 25-59-9.

Disclosure of tax returns and return information, see § 27-7-83.

Disclosure of estate tax returns and information, see § 27-9-55.

Public inspection of the reports and records of the commissioner of insurance, see § 83-1-21.

RESEARCH REFERENCES

ALR.

Validity, construction and application of statutory provisions relating to public access to police records. 82 A.L.R.3d 19.

Restricting public access to judicial records of state courts. 84 A.L.R.3d 598.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 A.L.R.4th 333.

Freedom of Information Act exemption (5 USCS § 552(b)(5)) for inter-agency and intra-agency memorandums or letters as applicable to communications to or from attorneys for the government. 54 A.L.R. Fed. 280.

What are matters "related solely to the internal personnel rules and practices of an agency" exempted from disclosure under Freedom of Information Act (5 USCS § 552(b)(2)). 141 A.L.R. Fed. 531.

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws §§ 12-31.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 1 et seq.

§ 25-59-29. Reproduction of records and storage of copies; destruction of originals.

Any custodian of public records as defined by this chapter is authorized to reproduce any part of the records kept by the office concerned unless otherwise prohibited by law or withheld from reproduction in the public interest. Such copies shall be produced by equipment and systems which shall accurately reproduce and preserve the original record in all material details and in a durable form. Each agency shall preserve such reproductions in conveniently accessible files and provide for preserving, examining and using them. If the records are of enduring value to the agency concerned or are determined to be of archival value by the Mississippi Department of Archives and History, the reproduction and storage methods and procedures used must meet standards approved by the department. One (1) master copy of each record of enduring or archival value reproduced shall be deposited with the department. Custodians of public records may destroy the original records from which the reproductions have been made, or any part of them, provided that (a) the records are of no value to the agency concerned, (b) the Mississippi Department of Archives and History certifies that the records may be destroyed through the provisions of retention schedules approved by the state records committee, and (c) the records microfilmed or reproduced and approved for destruction are reported to the Mississippi Department of Archives and History in such manner as it may direct. Any such reproduction or copy of any original record or other document shall be deemed to be the original record for all purposes and shall be admissible as evidence in all courts or administrative agencies. A facsimile, exemplified or certified copy thereof shall for all purposes be deemed to be a transcript or certified copy of the original record.

HISTORY:

Laws, 1981, ch. 501, § 15; Laws, 1996, ch. 453, § 5, eff from and after July 1, 1996.

Cross References —

Preservation and reproduction of county records and destruction of originals, see §§ 19-15-1, 19-15-3.

Preservation, reproduction and destruction of municipal records, see §§ 21-15-35, 21-15-37.

State hospital records, reproduction or destruction, see § 41-9-77.

OPINIONS OF THE ATTORNEY GENERAL

So long as "imaged" reproduction complies with requirements of Section 25-59-29 public funds customers of state banks are not required to preserve original canceled warrant and/or pay certificate, or other items which may be "imaged" by state banks, but these customers would be required to preserve copies returned to them by banks, in accordance with such statutes as may be applicable. 1993 Miss. Op. Att'y Gen. 665.

Custodians of PERS documents may use microfilming or other imaging technology to create an exact, high-quality reproduction of original documents and may destroy the paper documents if they follow the procedures set forth in Section 25-59-29. 1996 Miss. Op. Att'y Gen. 870.

RESEARCH REFERENCES

ALR.

Proof of public records kept or stored on electronic computing equipment. 71 A.L.R.3d 232.

Admissibility, under public records exception to hearsay rule, of record kept by public official without express statutory direction or authorization. 80 A.L.R.3d 414.

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws §§ 11, 19.

§ 25-59-31. Transition from existing program of reproduction and destruction of records.

In order to provide for an orderly implementation of this chapter, the department shall not disrupt the current microfilming and destruction of public records pursuant to law. Provided, however, that such agencies shall make no further disposition of public records without the approval of the director of the Mississippi Department of Archives and History pursuant to rules and regulations promulgated to implement this chapter.

HISTORY:

Laws, 1981, ch. 501, § 16, eff from and after July 1, 1981.

Cross References —

State hospital records, reproduction or destruction, see § 41-9-77.

CHAPTER 60.

LOCAL GOVERNMENT RECORDS

Sec.

25-60-1. Local Government Records Committee.
25-60-3. Establishment of regional records centers; certification and administration.
25-60-5. Document filing fee.

§ 25-60-1. Local Government Records Committee.

There is hereby created the Local Government Records Committee. The committee shall be composed of the following members: the Attorney General, or his designee; the Secretary of State, or his designee; the State Auditor of Public Accounts, or his designee; the Chairman of the State Tax Commission, or his designee; the Director of the State Department of Archives and History, or his designee; a representative from each of the following organizations, to be designated by the head of each organization for a term of two (2) years with a limit of not more than two (2) terms: the Family Research Association of Mississippi, Inc., the Mississippi Association of Supervisors, The Mississippi Bar, the Mississippi Chancery Clerks' Association, the Mississippi Circuit Clerks' Association, the Mississippi City Clerks' Association, the Mississippi Historical Society, the Mississippi Municipal Association, the Mississippi Sheriffs' Association, the Mississippi Superintendents of Education Association, the Mississippi Tax Assessors' Association and the Mississippi Tax Collectors' Association; and one (1) resident of this state appointed by the Governor for a term of two (2) years with a limit of not more than two (2) terms. The Director of the Department of Archives and History shall be chairman of the committee. Members of the committee shall receive per diem as provided in Section 25-3-69, and shall be reimbursed for necessary expenses and travel as provided in Section 25-3-41.

It is the duty of the committee to review, approve, disapprove, amend or modify records control schedules submitted by the Local Government Records Office, municipalities, municipal courts and counties for the disposition of records based on administrative, legal, fiscal or historical value. When the Mississippi Supreme Court designates the Department of Archives and History as the records management agency for courts, it is the duty of the committee to review, approve, disapprove, amend or modify records control schedules submitted by justice, county, circuit and chancery courts. Such records control schedules, once approved, shall be authoritative and directive, and shall have the force and effect of law.

It is the duty of municipalities and counties to cooperate with the committee in complying with the provisions of this section.

The committee is authorized to promulgate any rules and regulations necessary to implement the authority granted to it in this section.

HISTORY:

Laws, 1996, ch. 537, § 1; Laws, 1997, ch. 452, § 1; Laws, 2006, ch. 495, § 1, eff from and after July 1, 2006.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References —

Local Government Records Office, see § 39-5-9.

OPINIONS OF THE ATTORNEY GENERAL

A county office of the public defender is governed by the provisions of Sections 25-60-1 et seq. and, therefore, should contact the Local Government Records Committee to develop a records control schedule for the office. 2000 Miss. Op. Att'y Gen. 661.

§ 25-60-3. Establishment of regional records centers; certification and administration.

Counties and municipalities are hereby authorized to establish regional records centers for the storage, preservation and use of permanently valuable county and municipal records and of inactive county and municipal records which are required to be retained for a prescribed period of time but which are not needed to be kept in the creating office. Such regional records centers may be jointly established and maintained pursuant to agreements executed under the Interlocal Cooperation Act of 1974. Any center established under this section must either be certified by the Department of Archives and History as provided for historical or archival groups or public libraries in Section 25-59-25(2), or be administered by the Department of Archives and History pursuant to a contract between the department and the local government which established the center.

HISTORY:

Laws, 1996, ch. 537, § 3; Laws, 2006, ch. 495, § 2, eff from and after July 1, 2006.

Joint Legislative Committee Note —

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the last sentence of the section. The reference to "Section 25-29-25(2)" was changed to "Section 25-59-25(2)." The Joint Committee ratified the correction at its August 5, 2008, meeting.

§ 25-60-5. Document filing fee.

(1) Except as provided in subsection (2) of this section, any county or municipal official or employee who accepts documents for filing as public records shall, in addition to any other fee provided elsewhere by law, collect a fee of One Dollar ($1.00) for each document so filed. In municipalities and counties that collect Three Hundred Dollars ($300.00) or more per month from the filing fee, the official or employee collecting the fee shall, on or before the last day of each month, deposit the avails of Fifty Cents (50¢) of the fee into the general fund of the county or municipality, as appropriate, and remit the

remainder to the State Treasurer who shall deposit it to the credit of a statewide local government records management fund which is hereby created in the State Treasury. In municipalities and counties that collect less than Three Hundred Dollars ($300.00) per month from the filing fee, the avails of Fifty Cents (50¢) of the fee shall be remitted to the State Treasurer on a quarterly basis for deposit as provided in the previous sentence. Any monies remaining in the fund at the end of a fiscal year shall not lapse into the General Fund of the State Treasury. Counties and municipalities shall expend monies derived from the fee hereinabove imposed solely to support proper management of their official records in accordance with records management standards established by the Department of Archives and History. Monies in the Local Government Records Management Fund shall be expended by the Department of Archives and History, pursuant to legislative appropriation, to support the Local Government Records Office of the department and to support a local records management grant program as funds permit.

(2) The fee provided in subsection (1) of this section shall not be collected in any county until the board of supervisors, by resolution spread upon its minutes, determines that it will collect the fee.

(3) Each municipality and participating county may collect the filing fee provided for in this section on filings in any court subject to their respective jurisdiction.

HISTORY:

Laws, 1996, ch. 537, § 4; Laws, 1997, ch. 452, § 2; Laws, 2006, ch. 495, § 3, eff from and after July 1, 2006.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to Section 25-60-5(2), court documents accepted for filing as public records in participating counties are not subject to the filing fee, since costs associated with the filing of court documents are already set by statute and/or court rules. 1996 Miss. Op. Att'y Gen. 579.

Section 25-60-5(1) applies only to records for which a fee is charged for filing, such as building permits, deeds and court records. 2003 Miss. Op. Att'y Gen. 168.

Section 65-9-19 authorizes a board of supervisors, within the last six months of the boards of supervisors' terms, to advertise and award a contract for a state aid project as long as the requirements of the section have been met. 2003 Miss. Op. Att'y Gen. 175.

CHAPTER 61.

PUBLIC ACCESS TO PUBLIC RECORDS

Sec.

25-61-1. Short title; legislative policy regarding right of access to records.
25-61-2. State policy regarding access to public records.
25-61-3. Definitions.
25-61-5. Public access to records; written explanation required when records cannot be produced within specified time; form and retention of denials.
25-61-7. Fees for costs incident to providing records.
25-61-9. Trade secrets and confidential commercial or financial information.
25-61-10. Access to records stored, manipulated or retrieved by sensitive software; acquisition, modification, etc., of systems, etc., used for creation or maintenance of public records data bases.
25-61-11. Records exempted or privileged by law.
25-61-11.1. Exemption for private information of persons possessing a weapon permit.
25-61-12. Exemption for private information of law enforcement, judicial and prosecutorial personnel; exceptions.
25-61-13. Mississippi Ethics Commission to enforce chapter; procedure upon complaint by any person denied right to inspect public records; petition to chancery court to enforce or appeal order.
25-61-15. Penalty for wrongful denial of access to record.
25-61-17. Chapter not to affect legislature's regulation of own proceedings and records access.
25-61-19. State agencies and departments required to post to websites legislative updates on legislation revising agency or department powers and duties.

§ 25-61-1. Short title; legislative policy regarding right of access to records.

This chapter shall be known and may be cited as the "Mississippi Public Records Act of 1983." It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by Chapter 453, Laws of 1996. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.

HISTORY:

Laws, 1983, ch. 424, § 1; Laws, 1996, ch. 453, § 1, eff from and after July 1, 1996.

Editor's Notes —

Laws of 1996, ch. 453, amended §§ 25-61-1, 25-61-3, 25-61-9 and 25-59-29 and added § 25-61-10.

Cross References —

Relation to Mississippi Accountability and Transparency Act, see § 27-104-159.

Exemption from chapter of records relating to applications for licenses to carry concealed pistols or revolvers, see § 45-9-101.

Exemption from chapter of records relating to records maintained by justice information center, see § 45-27-19.

Application of this section to the disclosure of records, reports or information obtained pursuant to the underground storage tank act of 1988, see § 49-17-425.

Applications, bonds, records and other papers filed with commissioner pursuant to the Small Loan Privilege Tax Law subject to Public Records Act, see § 75-67-231.

Application of this chapter to Mississippi Commodities Enforcement Act, see § 75-89-27.

Withholding from public disclosure records maintained by domestic violence shelters, see § 93-21-109.

JUDICIAL DECISIONS

1. In general.

Chancery court erred, inter alia, in requiring Mississippi Department of Corrections to produce records, without redaction, pertaining to its process and protocol for lethal injections, because, during the pendency of the matter on appeal, the Legislature declared that the information sought was exempt, the Legislature did not include a saving clause, any rights involved in the present suit were public rights shared by all, and the applicant acquired no vested rights in the information as a result of submitting its request and did not take a prejudicial position in reliance on receiving the information. Miss. Dep't of Corr. v. Roderick & Solange MacArthur Justice Ctr., 220 So. 3d 929, 2017 Miss. LEXIS 141 (Miss. 2017).

Where the Harrison County Development Commission (HCDC), a political subdivision of the State of Mississippi, willfully and knowingly denied a county citizen access to certain records related to a planned development (in part, by unilaterally requiring fees that were not part of its policy), and which were not exempt under the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1 to Miss. Code Ann.§ 25-61-17, it was properly ordered to produce those records not specifically exempt, and pay a civil penalty, as well as attorney's fees. Pursuant to Miss. Code Ann. § 25-61-9(2), HCDC should have separated information on its director's salary and leave time (subject to disclosure), from his personnel file and disclosed any non exempt material; further, the information on its business partners or prospects were not confidential and were subject to disclosure, and therefore, it was not entitled to a protective order per Miss. R. Civ. P. 26(d). Harrison County Dev. Comm'n v. Kinney, 920 So. 2d 497, 2006 Miss. App. LEXIS 51 (Miss. Ct. App. 2006).

Any rules or regulations of administrative boards should provide no less access of the public to their proceedings and records than is afforded under the Open Meetings Act, §§ 25-41-1 et seq. and the Public Records Act, §§ 25-61-1 et seq. State Oil & Gas Bd. v. McGowan, 542 So. 2d 244, 1989 Miss. LEXIS 184 (Miss. 1989).

Closure order in criminal trial did not violate newspapers' right of access to public records because that right is not of constitutional dimensions, instead being derived from common law and applicable statutes. Mississippi Publishers Corp. v. Coleman, 515 So. 2d 1163, 1987 Miss. LEXIS 2900 (Miss. 1987).

OPINIONS OF THE ATTORNEY GENERAL

A municipality that is participating in a self insured pool is a public body carrying out a governmental function and is subject to the Public Records Act in the conduct of such activities. 1991 Miss. Op. Att'y Gen. 855.

Generally, books and papers owned by municipal library are public records subject to Mississippi Public Records Act, codified at Miss. Code Sections 25-61-1 et seq., and public has right of access to these records. 1993 Miss. Op. Att'y Gen. 299.

Although the confidentiality provisions of BellSouth's tariffs have been approved by the Mississippi Public Service Commission, it could not be said that such is sufficient to override the Public Records Act. 1998 Miss. Op. Att'y Gen. 242.

There is no general exemption from the Public Records Act for information regarding present or former inmates of the Department of Corrections; while social security numbers are exempted from public disclosure in certain instances, there is no specific exemption for inmate social security numbers contained in files maintained by the Department of Corrections. 2000 Miss. Op. Att'y Gen. 279.

Generally, most medical records in a mental commitment file in the office of the Chancery Clerk will fall under one or more of the exemptions to the Public Records Act; exempt records should not be released or kept open to the public absent a court order or authorized consent. 2002 Miss. Op. Att'y Gen. 543.

Reports assessing the vulnerabilities of state and county computer systems from internal and external intrusion, or hacking, which are being conducted by the state through the State Department of Homeland Security, are exempt from the Public Records Act of 1983. 2004 Miss. Op. Att'y Gen. 342.

Names of applicants found on applications for employment are exempt from the Public Records Act. 2005 Miss. Op. Att'y Gen. 316.

An appraisal prepared in anticipation of litigation is attorney work product and is exempt from the Mississippi Public Records Act. 2005 Miss. Op. Att'y Gen. 291.

No state law would prevent the provision by a county tax collector/assessor of information as to the amount due or paid by an individual for a motor vehicle privilege license to the municipalities. 2005 Miss. Op. Att'y Gen. 560.

Whether county emergency medical service records, including health conditions of persons injured in an accident, constituted exempt "hospital records" under Section 41-9-68 or were otherwise privileged under Section 13-1-21 is a factual question. 2005 Miss. Op. Att'y Gen. 595.

No state law provisions can be found which guarantee privacy rights to persons who apply or pay for public utility services, or which grant a specific exclusion from disclosure of information of such a nature held by a public body. 2006 Miss. Op. Att'y Gen. 291.

Any public record which is maintained by a municipality is subject to review by the public, regardless of the age of the record or the fact that the administration has changed. 2006 Miss. Op. Att'y Gen. 291.

Drafts of official minutes which have not yet been approved, notes taken by the city clerk during official meetings for use during the preparation of official minutes as well as any tape recordings made for the same purpose are subject to disclosure pursuant to the Mississippi Public Records Act. 2006 Miss. Op. Att'y Gen. 359.

Where it is determined that release of parts of a report on building security issues would impede a police department's law enforcement efforts, endanger the life or safety of officers or pertain to quality control matters, a city may redact those portions from material which is to be released. 2006 Miss. Op. Att'y Gen. 217.

A non-profit public utility corporation is not subject to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, and therefore has the discretion to release or not release consumer records to law enforcement for purposes of keeping updated E-911 records, provided there is no Federal privacy law or rule prohibiting the release. 2007 Miss. Op. Att'y Gen. 7, 2007 Miss. AG LEXIS 14.

RESEARCH REFERENCES

ALR.

Actions brought under Freedom of Information Act, 5 U.S.C.S. §§ 522 et seq. – Supreme Court cases. 167 A.L.R. Fed. 545.

§ 25-61-2. State policy regarding access to public records.

It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter; furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each public body increases its use of, and dependence on, electronic record keeping, each public body must ensure reasonable access to records electronically maintained, subject to records retention.

HISTORY:

Laws, 1996, ch. 537, § 5, eff from and after July 1, 1996.

JUDICIAL DECISIONS

1. Construction.

Structure and wording of the Mississippi Public Records Act of 1983 as a whole indicates that the right the Legislature intended to create was the right of the public to the disclosure of public records; based on the language of the Public Records Act, the Legislature intended the right affected by the 2015 amendments discussed above to be the right of the public to have access to materials that belong to the public. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

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The Mississippi Department of Employment Security's alien labor program is exempt from the Mississippi Public Records Act, and thus, confidential in regards to requests made by third-party advocacy groups. 2005 Miss. Op. Att'y Gen. 499.

Subject to written procedures which may address concerns such as security and disruption of business, a public body must make public records available for requestors to research and copy. 2006 Miss. Op. Att'y Gen. 463.

§ 25-61-3. Definitions.

The following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Public body" shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

(b) "Public records" shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

(c) "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

(d) "Proprietary software" means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.

(e) "Incident report" means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.

(f) "Investigative report" means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:

(i) Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;

(ii) Records that would reveal the identity of informants and/or witnesses;

(iii) Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;

(iv) Records that would disclose investigatory techniques and/or results of investigative techniques;

(v) Records that would deprive a person of a right to a fair trial or an impartial adjudication;

(vi) Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;

(vii) Records pertaining to quality control or PEER review activities; or

(viii) Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.

(g) "Law enforcement agency" means a public body that performs as one (1) of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

HISTORY:

Laws, 1983, ch. 424, § 2; Laws, 1996, ch. 453, § 2; Laws, 2008, ch. 392, § 1; Laws, 2013, ch. 497, § 34, eff from and after July 1, 2013.

Cross References —

Exemption of judicial records in possession of public body, see § 9-1-38.

Exemption of jury records in possession of public body, see § 13-5-97.

Exemption of certain personnel records in possession of public body, see § 25-1-100.

Exemption of certain attorney's work product in possession of public body, see § 25-1-102.

Application of this chapter to the legislature, see § 25-61-17.

Exemption of certain individual tax records in possession of public body, see § 27-3-77.

Exemption of certain appraisal records in possession of public body, see § 31-1-27.

Exemption of certain academic records in possession of public body, see § 37-11-51.

Mississippi Charter School Authorizer Board, generally, see § 37-179-1 et seq.

Exemption of certain archaeological records in possession of public body, see § 39-7-41.

Records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986, see § 41-61-63.

Restrictions on examination of workers' compensation records, see § 71-3-66.

Exemption of certain licensure application and examination records in possession of public body, see § 73-52-1.

Exemption of commercial and financial information of proprietary nature required to be submitted to public body, see § 79-23-1.

JUDICIAL DECISIONS

ANALYSIS

1. Investigative report.
2. Public body, public records.

1. Investigative report.

Court of appeals erred in holding that the public records a publishing company sought were exempt under the investigative-report exemption in the Mississippi Public Records Act because the company waived its claim that the exemption applied; no defense was asserted in the Department of Audit's answer that the requested records were subject to grand-jury secrecy laws, and a "protective order" drafted by the special assistant attorneys general only partly modified the grand-jury subpoenas. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Chancery court erred in finding that the Department of Marine Resources (DMR) violated the Mississippi Public Records Act of 1983 when it denied a newspaper publisher's requests and when it found the investigative-report exemption did not apply because the records the publisher sought were investigative reports; a State grand-jury subpoena prohibited the release of the DMR records to anyone except for the State Auditor, who became the custodian of DMR's records. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

2. Public body, public records.

Department of Audit, as a public body, was liable for expenses and attorney's fees in the amounts found and calculated by the chancery court under the Mississippi Public Records Act (MPRA) because when the chancery court ultimately decided that the documents a publishing company sought were not exempt under the MPRA, the Department continued to frustrate the company's records request; the Department delayed and expanded the litigation with a series of actions that defeated the records request. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Citizen did not show a planning and development district (district) was a public agency because (1) the district's incorporation with the Secretary of State's office created the district, not the Mississippi Constitution, a statute, or an executive order, and (2) a later executive order did not convert the district into such an agency. Kinney v. S. Miss. Planning & Dev. Dist., 202 So. 3d 187, 2016 Miss. LEXIS 349 (Miss. 2016).

Chancery court properly dismissed defendant's complaint discovery because it was subsumed by the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 through 99-39-29) and was outside the chancery court's equity jurisdiction, defendant was obligated to obtain leave from the state supreme court before filing a postconviction relief motion since his convictions had been affirmed on direct appeal, and defendant's complaint could not be construed as a pleading where the court reporter did not fall under the definition of a "public body," and any tapes used to prepare an official transcript were not "public records." Copple v. State, 196 So. 3d 189, 2016 Miss. App. LEXIS 428 (Miss. Ct. App. 2016).

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Voter registration lists and applications for voter registration are public records subject to Mississippi Public Records Act of 1983. 1990 Miss. Op. Att'y Gen. 32.

Voter registration lists retained in electronic format, as in computer memory storage devices such as hard disk drives, diskettes, or magnetic tape, are subject to Mississippi Public Records Act of 1983. 1990 Miss. Op. Att'y Gen. 32.

A municipality, including the water/sewer department, is a public body, and the records of such department, including meter reading lists, billings, and individual account documents, are public records. 1992 Miss. Op. Att'y Gen. 310.

Miss. Code Section 25-61-3(b) makes all of records of Justice Court dealing with both criminal cases and civil cases public records; therefore, public has right to inspect records unless they are exempted from Public Records Act (Miss. Code Sections 25-61-1 through 25-61-17) by some other provision. 1993 Miss. Op. Att'y Gen. 210.

Under Miss. Code Section 25-61-3(b), if public board member tape records meeting at his or her own expense for personal use, such recording is not "public record". 1993 Miss. Op. Att'y Gen. 340.

The definition of "public record" contained in the statute applies to records that were created prior to July 1, 1983 and that were retained outside of the public body custody by a public body official after the expiration of his term. 1998 Miss. Op. Att'y Gen. 641.

Neither a private nonprofit corporation nor a limited liability corporation meets the definition of a "public body". 2000 Miss. Op. Att'y Gen. 674.

Criminal case files and any records related to those cases in the office of a district attorney are exempt from the Public Records Act. 2001 Miss. Op. Att'y Gen. 100.

As a general rule, unless state law provides a specific exemption from disclosure, records in the possession of a public body, including a municipality and its departments, would be "public records." 2003 Miss. Op. Att'y Gen. 262.

It is unclear whether a Planning and Development District (PDD) is an entity of the state or of a political subdivision so as to come within the definition of "public body." However, it is clear that, inherent in a county's membership in any PPD, is the full right of access to, inspection, and copying of the financial records of the PDD. Any bylaws or rules of the PDD to the contrary are void as against public policy. 2004 Miss. Op. Att'y Gen. 592.

A fire protection district formed pursuant to §§ 19-5-151 et seq. is created by a resolution and is a "public body" under the Mississippi Public Records Act. 2004 Miss. Op. Att'y Gen. 91.

Where council members consider the city manager's written recommendations, comments and information in resolving issues before the council, the notes are subject to the Public Records Act. 2006 Miss. Op. Att'y Gen. 175.

A public body is under no duty to review multiple records to compile one document which responds to a specific request, but would be under a duty to provide records to a requestor in order that the requestor may review the documents and make their own conclusions. 2006 Miss. Op. Att'y Gen. 291.

RESEARCH REFERENCES

ALR.

State freedom of information act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

Public access to records and proceedings of civil actions in Federal District Courts. 96 A.L.R. Fed. 769.

§ 25-61-5. Public access to records; written explanation required when records cannot be produced within specified time; form and retention of denials.

(1)(a) Except as otherwise provided by Sections 25-61-9 and 25-61-11, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body concerning the cost, time, place and method of access, and public notice of the procedures shall be given by the public body, or, if a public body has not adopted written procedures, the right to inspect, copy or mechanically reproduce or obtain a reproduction of a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.

(b) If a public body is unable to produce a public record by the seventh working day after the request is made, the public body must provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is mutual agreement of the parties, or the information requested is part of ongoing negotiations related to a request for competitive sealed proposals, in no event shall the date for the public body's production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request. Production of competitive sealed proposals in accordance with requests made pursuant to this section shall be no later than seven (7) working days after the notice of intent to award is issued to the winning proposer. Persons making a request for production of competitive sealed proposals after the notice of intent to award is issued by the public body shall have a reasonable amount of time, but in no event less than seven (7) working days after the production of the competitive sealed proposals, to protest the procurement or intended award prior to contract execution.

(2) If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted material and make

the nonexempted material available for examination. Such public agency shall be entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.

(3) Denial by a public body of a request for access to or copies of public records under this chapter shall be in writing and shall contain a statement of the specific exemption relied upon by the public body for the denial. Each public body shall maintain a file of all denials of requests for public records. Public bodies shall be required to preserve such denials on file for not less than three (3) years from the date such denials are made. This file shall be made available for inspection or copying, or both, during regular office hours to any person upon written request.

HISTORY:

Laws, 1983, ch. 424, § 3; Laws, 2008, ch. 392, § 2; Laws, 2010, ch. 501, § 1; Laws, 2016, ch. 356, § 1, eff from and after July 1, 2016.

Cross References —

Exemption of certain judicial records from chapter, see § 9-1-38.

Exemption of certain jury records from chapter, see § 13-5-97.

Exemption of certain personnel records from chapter, see § 25-1-100.

Exemption of certain attorneys' work products from chapter, see § 25-1-102.

Exemption of documents from third parties containing confidential information, see § 25-61-9.

Exemptions of records otherwise imposed by law, see § 25-61-11.

Proceedings to compel public access to public records under this section, see § 25-61-13.

Penalty for wrongful denial of access to records, see § 25-61-15.

Application of this chapter to legislature, see § 25-61-17.

Exemption of certain individual tax records from chapter, see § 27-3-77.

Exemption of certain appraisal records from chapter, see § 31-1-27.

Exemption of certain academic records from chapter, see § 37-11-51.

Exemption of certain archaeological records from chapter, see § 39-7-41.

Exemption of certain hospital records from chapter, see § 41-9-68.

Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.

Records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986, see § 41-61-63.

Financial records, except trade secrets, of nonprofit corporation formed to manage prison industries subject to provisions of this chapter, see § 47-5-575.

Restrictions on examination of workers' compensation records, see § 71-3-66.

Exemption of certain licensure application and examination records from chapter, see § 73-52-1.

Exemption of certain commercial and financial records from chapter, see § 79-23-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. No violation found.

1. In general.

Structure and wording of the Mississippi Public Records Act of 1983 as a whole indicates that the right the Legislature intended to create was the right of the public to the disclosure of public records; based on the language of the Public Records Act, the Legislature intended the right affected by the 2015 amendments discussed above to be the right of the public to have access to materials that belong to the public. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

Reports containing identities of informants who told Department of Environmental Quality (DEQ) that electric power company was improperly disposing of regulated environmental waste were exempt from disclosure under Public Records Act, despite claim that identities of any informants could be deleted from desired documents. Singing River Elec. Power Ass'n v. State ex rel. Mississippi Dep't of Envtl. Quality, 693 So. 2d 368, 1997 Miss. LEXIS 154 (Miss. 1997).

Fact that electric power company wanted to know identities of informants who told Department of Environmental Quality (DEQ) that company was improperly disposing of regulated environmental waste because such knowledge could shed light on either a hostile takeover attempt that targeted company or a shooting incident at one of company's substation transformers did not provide basis to compel Department to disclose identities of informants notwithstanding statutory direction otherwise. Singing River Elec. Power Ass'n v. State ex rel. Mississippi Dep't of Envtl. Quality, 693 So. 2d 368, 1997 Miss. LEXIS 154 (Miss. 1997).

2. No violation found.

Chancery court erred in finding that the Department of Marine Research (DMR) violated the Mississippi Public Records Act because DMR acted in good faith to resolve a publishing company's public-records request; accordingly, DMR was not joint and severally liable for attorney's fees, costs, and expenses. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Chancery court erred in finding that the Department of Marine Resources (DMR) violated the Mississippi Public Records Act of 1983 when it denied a newspaper publisher's requests and when it found the investigative-report exemption did not apply because the records the publisher sought were investigative reports; a State grand-jury subpoena prohibited the release of the DMR records to anyone except for the State Auditor, who became the custodian of DMR's records. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Because the investigative-report exemption applied, the chancery court erred in finding that the State Auditor violated the Mississippi Public Records Act of 1983 when it denied a newspaper publisher's requests. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Appellate court found no error in the chancellor's finding of no willful violation of the Public Records Act, Miss. Code Ann. § 25-61-5 and Miss. Code Ann. § 25-61-15 regarding the acts of the planning commission because the element of "willfulness" only pertained to assessment of possible civil penalties, not the actual violation. No exception to a Public Records Act violation could occur, since there was no "willfulness" element regarding the violation itself. LaCroix v. Marshall County Bd. of Supervisors, 28 So. 3d 650, 2009 Miss. App. LEXIS 537 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 90 (Miss. 2010).

OPINIONS OF THE ATTORNEY GENERAL

Bid proposals which contractors have submitted to Highway Commission and which have been publicly read are public records, and public has right of access to these records; Highway Commission may give notice to contractors that their bid proposals will be made available to public to allow these contractors opportunity to get court orders protecting such information. 1990 Miss. Op. Att'y Gen. 181.

As the general populace has access to public records, individual consumers of a municipal water system cannot prevent a municipality from responding to reasonable requests from the public for access to public records. 1992 Miss. Op. Att'y Gen. 310.

Miss. Code Section 25-61-5 allows Attorney General's office to adopt reasonable written procedures concerning costs, time, place, and method of access to public records; such written procedures must be published or posted and may authorize production of public record at any time within fourteen working days of date of request. 1993 Miss. Op. Att'y Gen. 210.

Gross salaries of state employees are considered to be matter of public record within meaning of Section 25-61-5(1) but net salaries and tax exemption status of state employees are exempt from public access under provisions of Section 27-3-77. 1994 Miss. Op. Att'y Gen. 900.

Whether a police manual discloses investigative techniques is a factual question. If it does, then under Section 45-29-1[repealed], the police department may deny in writing, a request made under Section 25-61-5, pursuant to the Mississippi Public Records Act and the requestor could resort to a court of competent jurisdiction. 1995 Miss. Op. Att'y Gen. 613.

A chancery clerk was required to provide copies of public records in his possession in accordance with the Public Records Act where a request for public records was made to him, rather than the board of supervisors. 2002 Miss. Op. Att'y Gen. 194.

The budgets and any proposed budgets of regional libraries are public records subject to inspection. 2002 Miss. Op. Att'y Gen. 479.

While required to provide access to the public, municipalities and other public bodies are entitled to determine the manner in which the records are made available to the public pursuant to Section 25-61-5. 2003 Miss. Op. Att'y Gen. 262.

If the member of a municipal governing body seeking to review personnel records has need, in the course and scope of his or her duties on behalf of the municipality, to review them, he or she should be entitled to such a review. 2004 Miss. Op. Att'y Gen. 683.

A municipality is entitled to adopt reasonable procedures in which its records are made available to the public pursuant to Miss. Code Ann. § 25-61-5, and may charge a fee calculated to reimburse it for, but in no case exceed, the actual cost of providing the records. Municipal aldermen or councilmen, however, are entitled to reasonable access without charge to any information required to perform the duties of their office. 2007 Miss. Op. Att'y Gen. 104, 2007 Miss. AG LEXIS 100.

RESEARCH REFERENCES

ALR.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 A.L.R.4th 333.

State freedom of information act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

Public access to records and proceedings of civil actions in Federal District Courts. 96 A.L.R. Fed. 769.

When are government records "medical files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, "medical," and similar files. 104 A.L.R. Fed. 734.

When are government records "personnel files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain "personnel," medical, and similar files. 104 A.L.R. Fed. 757.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files. 106 A.L.R. Fed. 94.

What constitutes "trade secrets and commercial or financial information obtained from person and privileged or confidential," exempt from disclosure under Freedom of Information Act (5 USCS § 552(b)(4)) (FOIA). 139 A.L.R. Fed. 225.

What are administrative staff manuals and instructions to staff that affect members of public that must be disclosed under Freedom of Information Act (FOIA) (5 USCS § 552(a)(2)(C)). 139 A.L.R. Fed. 299.

What are matters "related solely to the internal personnel rules and practices of an agency" exempted from disclosure under Freedom of Information Act (5 USCS § 552(b)(2)). 141 A.L.R. Fed. 531.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C.S § 552). 165 A.L.R. Fed. 591.

§ 25-61-7. Fees for costs incident to providing records.

(1) Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Any staff time or contractual services included in actual cost shall be at the pay scale of the lowest level employee or contractor competent to respond to the request. Such fees shall be collected by the public body in advance of complying with the request.

(2) A public body may establish a standard fee scale to reimburse it for the costs of creating, acquiring and maintaining a geographic information system or multipurpose cadastre as authorized and defined under Section 25-61-1 et seq., or any other electronically accessible data. Such fees must be reasonably related to the costs of creating, acquiring and maintaining the geographic information system, multipurpose cadastre or other electronically accessible data, for the data or information contained therein or taken therefrom and for any records, papers, accounts, maps, photographs, films, cards, tapes, recordings or other materials, data or information relating thereto, whether in printed, digital or other format. In determining the fees or charges under this subsection, the public body may consider the type of information requested, the

purpose or purposes for which the information has been requested and the commercial value of the information.

HISTORY:
Laws, 1983, ch. 424, § 4; Laws, 1999, ch. 466, § 2; Laws, 2014, ch. 416, § 1, eff from and after July 1, 2014.

JUDICIAL DECISIONS

1. In general.

Where the Harrison County Development Commission (HCDC), a political subdivision of the State of Mississippi, willfully and knowingly denied a county citizen access to certain records related to a planned development (in part, by unilaterally requiring fees that were not part of its policy), and which were not exempt under the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1 to Miss. Code Ann.§ 25-61-17, it was properly ordered to produce those records not specifically exempt, and pay a civil penalty, as well as attorney's fees. Pursuant to Miss. Code Ann. § 25-61-9(2), HCDC should have separated information on its director's salary and leave time (subject to disclosure), from his personnel file and disclosed any non exempt material; further, the information on its business partners or prospects were not confidential and were subject to disclosure, and therefore, it was not entitled to a protective order per Miss. R. Civ. P. 26(d). Harrison County Dev. Comm'n v. Kinney, 920 So. 2d 497, 2006 Miss. App. LEXIS 51 (Miss. Ct. App. 2006).

In an action by the state executive committee of a political party against the state commissioner for public safety in connection with a dispute over the proper fee for access to the complete drivers license records of the state, under §§ 25-61-7 and 45-1-21, the amount of the fee to be commensurate with the actual cost to the state of providing the copies of those records. Roberts v. Mississippi Republican Party State Executive Committee, 465 So. 2d 1050, 1985 Miss. LEXIS 1969 (Miss. 1985).

Political party provided with access to drivers license records may be charged only for actual cost of providing copies of records. Roberts v. Mississippi Republican Party State Executive Committee, 465 So. 2d 1050, 1985 Miss. LEXIS 1969 (Miss. 1985).

In dispute over reasonableness of fee charged for providing drivers license records to political party, both § 25-61-7 and § 45-1-21 must be given effect since there is no express repeal of § 45-1-21 and no irreconcilable conflict between statutes. Roberts v. Mississippi Republican Party State Executive Committee, 465 So. 2d 1050, 1985 Miss. LEXIS 1969 (Miss. 1985).

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Under Miss. Code Section 25-61-7, when copies of public records are requested, Attorney General's office may establish and collect fees to reimburse, but in no case to exceed actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records; these fees may be collected in advance before compliance with request. 1993 Miss. Op. Att'y Gen. 210.

A search of the criminal records for felony convictions would be exempt from the salary cap on compensation received by Circuit Clerks. 1996 Miss. Op. Att'y Gen. 3.

When performing criminal record checks, the District Attorney's office may only charge a fee for the actual cost associated with supplying the record to the requestor. 1998 Miss. Op. Att'y Gen. 12.

There is no statutory authority for chancery clerks to charge flat monthly fees to abstractors for use of the fax machine in the office of the clerk or to charge fees for sending faxes to members of the public. 2002 Miss. Op. Att'y Gen. 334.

Because Section 25-61-7(2) applies not just to Geographic Information System and multipurpose cadastre information, but also "other electronically accessible data," a county may establish a standard fee scale to reimburse it for creating, acquiring and maintaining other electronically accessible data. 2005 Miss. Op. Att'y Gen. 612.

How fees shall be calculated is matter for the board of supervisors to address; however the board must make factual determinations regarding each statutorily authorized factor used in determining the standard fee scale and have those determinations recorded in the minutes. 2005 Miss. Op. Att'y Gen. 612.

The board of supervisors must establish and approve, as evidenced in the minutes, any standard fee scale authorized by Section 25-61-7(2), as well as any other "pricing policy." 2005 Miss. Op. Att'y Gen. 612.

While the board of supervisors may require commercial users of the data to pay a premium for the data, the board may not restrict the data's use to "private use only" or prohibit resale of the information acquired. 2005 Miss. Op. Att'y Gen. 612.

Provided the costs and expenses are calculated pursuant to a lawfully enacted policy designed to capture the "actual cost" of providing public records as provided by Section 25-61-7, the fact that the initial estimate was lower than the actual amount necessary to cover the costs would not preclude a public body from collecting that additional amount. 2006 Miss. Op. Att'y Gen. 291.

A municipality is entitled to adopt reasonable procedures in which its records are made available to the public pursuant to Miss. Code Ann. § 25-61-5, and may charge a fee calculated to reimburse it for, but in no case exceed, the actual cost of providing the records. Municipal aldermen or councilmen, however, are entitled to reasonable access without charge to any information required to perform the duties of their office. 2007 Miss. Op. Att'y Gen. 104, 2007 Miss. AG LEXIS 100.

§ 25-61-9. Trade secrets and confidential commercial or financial information.

(1) Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one-day time period. Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.

(2) If any public record which is held to be exempt from disclosure pursuant to this chapter contains material which is not exempt pursuant to this chapter, the public body shall separate the exempt material and make the nonexempt material available for examination or copying, or both, as provided for in this chapter.

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college, university or public hospital under contract with a firm, business, partnership, association, corporation, individual or other like entity shall not be subject to inspection, examination, copying or reproduction under this chapter.

(4) Misappropriation of a trade secret shall be governed by the provisions of the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

(5) A waste minimization plan and any updates developed by generators and facility operators under the Mississippi Comprehensive Multimedia Waste Minimization Act of 1990 shall be retained at the facility and shall not be subject to inspection, examination, copying or reproduction under this chapter.

(6) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under this chapter.

As used in this subsection, "sensitive" means only those portions of data processing software, including the specifications and documentation, used to:

(a) Collect, process, store, and retrieve information which is exempt under this chapter.

(b) Control and direct access authorizations and security measures for automated systems.

(c) Collect, process, store, and retrieve information, disclosure of which would require a significant intrusion into the business of the public body.

(7) For all procurement contracts awarded by state agencies, the provisions of the contract which contain the commodities purchased or the personal or professional services provided, the unit prices contained within the procurement contracts, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information under this section, and shall be available for examination, copying or reproduction as provided for in this chapter. Any party seeking a protective order for a procurement contract awarded by state agencies shall give notice to and provide the reasons for the protective order to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. The notice and reasons for the protective order must be posted on the Mississippi procurement portal for a minimum of seven (7) days before filing the petition seeking the protective order in chancery court. Any party seeking a protective order in violation of this subsection may be barred by a state agency from submitting bids, proposals or qualifications for procurement for a period not to exceed five (5) years.

HISTORY:

Laws, 1983, ch. 424, § 5; Laws, 1988, ch. 406, § 1; Laws, 1990, ch. 442, § 12; Laws, 1990, ch. 507, § 15; Laws, 1996, ch. 453, § 3; Laws, 2015, ch. 431, § 4; Laws, 2015, ch. 484, § 3; Laws, 2016, ch. 359, § 1; Laws, 2017, ch. 400, § 15, eff from and after Jan. 1, 2018; Laws, 2018, ch. 350, § 1, eff from and after July 1, 2018.

Joint Legislative Committee Note —

Section 4 of ch. 431, Laws of 2015, effective July 1, 2015 (approved March 31, 2015), amended this section. Section 3 of ch. 484, Laws of 2015, effective from and after January 1, 2016 (approved April 22, 2015), also amended this section. As set out above, this section reflects the language of both amendments, effective January 1, 2016, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 17, 2015, meeting of the Committee.

Amendment Notes —

The 2017 amendment, effective January 1, 2018, added the last three sentences of (7).

The 2018 amendment, in the first sentence of (7), inserted "the unit prices contained within the procurement contracts" and "overall."

Cross References —

Exemption of certain judicial records from chapter, see § 9-1-38.

Exemption of certain jury records from chapter, see § 13-5-97.

Exemption of certain personnel records from chapter, see § 25-1-100.

Exemption of certain attorneys' work products from chapter, see § 25-1-102.

Exemption of records otherwise imposed by law, see § 25-61-11.

Exemption of certain individual tax records from chapter, see § 27-3-77.

Exemption of certain appraisal records from chapter, see § 31-1-27.

Exemption of certain academic records from chapter, see § 37-11-51.

Exemption of certain archaeological records from chapter, see § 39-7-41.

Exemption of certain hospital records from chapter, see § 41-9-68.

Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.

Financial records, except trade secrets, of nonprofit corporation formed to manage prison industries subject to provisions of this chapter, see § 47-5-575.

Mississippi Comprehensive Multimedia Waste Minimization Act, see § 49-31-1 et seq.

Restrictions on examination of workers' compensation records, see § 71-3-66.

Exemption of certain licensure application and examination records from chapter, see § 73-52-1.

Protection of trade secrets or confidential commercial or financial information by public utility under this section, see § 79-23-1.

Exemption of certain commercial and financial records from chapter, see § 79-23-1.

Records provided by insurer in course of financial examination by Commissioner of Insurance not required to be made public under Public Records Act, see § 83-5-209.

JUDICIAL DECISIONS

1. In general.

Structure and wording of the Mississippi Public Records Act of 1983 as a whole indicates that the right the Legislature intended to create was the right of the public to the disclosure of public records; based on the language of the Public Records Act, the Legislature intended the right affected by the 2015 amendments discussed above to be the right of the public to have access to materials that belong to the public. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

Rights and remedies at issue were created solely by the Mississippi Public Records Act of 1983; thus, absent an applicable saving clause, a final judgment, or a loss to the telecommunications company of a vested right, the supreme court had to apply the Public Records Act to a corporation's petition to revoke a protective order of a proposal and contract between the Department of Information Technology Services and the telecommunications company as though it had always read as it read today. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

Animal rights organization failed to rebut the evidence presented by the university and the company that the data and information requested in the subject records constituted trade secrets and/or confidential commercial and financial information of a proprietary nature developed by the university under contract with the company; therefore, the data and information requested by the organization was exempted from the provisions of the Mississippi Public Records Act, in harmony with applicable federal law, Miss. Code Ann. §§ 25-61-9 through 25-61-13, 79-23-1(3), and 7 U.S.C.S. § 2143(a)(6)(B). Miss. State Univ. v. People for the Ethical Treatment of Animals, Inc., 992 So. 2d 595, 2008 Miss. LEXIS 355 (Miss. 2008).

Where the Harrison County Development Commission (HCDC), a political subdivision of the State of Mississippi, willfully and knowingly denied a county citizen access to certain records related to a planned development (in part, by unilaterally requiring fees that were not part of its policy), and which were not exempt under the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1 to Miss. Code Ann.§ 25-61-17, it was properly ordered to produce those records not specifically exempt, and pay a civil penalty, as well as attorney's fees. Pursuant to Miss. Code Ann. § 25-61-9(2), HCDC should have separated information on its director's salary and leave time (subject to disclosure), from his personnel file and disclosed any non exempt material; further, the information on its business partners or prospects were not confidential and were subject to disclosure, and therefore, it was not entitled to a protective order per Miss. R. Civ. P. 26(d). Harrison County Dev. Comm'n v. Kinney, 920 So. 2d 497, 2006 Miss. App. LEXIS 51 (Miss. Ct. App. 2006).

Publisher was unable to obtain the amount that a utility charged a third party because the information was exempt from disclosure as confidential under Miss. Code Ann. § 79-23-1; the utility had followed the procedures to protect the document under Miss. Code Ann. § 25-61-9(1) and Miss. Pub. Serv. Comm'n R. Prac. & P. 4D, 4I; moreover, the amount charged did not meet the definition of rate under Miss. Code Ann. § 77-3-3(e) because it was a privately negotiated agreement. Gannett River States Publ. Co. v. Entergy Miss., Inc., 940 So. 2d 221, 2006 Miss. LEXIS 447 (Miss. 2006).

The chancellor erred when he applied the strict definition of a trade secret found in § 75-26-3 as the sole standard to measure the availability under § 25-61-9 to the general public of a proposal to operate a coin operated laundry facility for a university since the Public Records Act protects a broader range of information than just that covered under the definition contained in the Trade Secrets Act. Caldwell & Gregory, Inc. v. University of S. Miss., 716 So. 2d 1120, 1998 Miss. App. LEXIS 514 (Miss. Ct. App. 1998).

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A report written by a consultant hired by a city which contains information projecting the cost to the city to install a telecommunications system and places a valuation on facilities of a private provider of telecommunications services in the city who might compete against the city in its effort to install a telecommunications system is not protected from disclosure under the statute. 1998 Miss. Op. Att'y Gen. 180.

Before releasing names, addresses and telephone numbers maintained by his office, a county E-911 Coordinator should give notice pursuant to the statute to the third party and allow the third party a reasonable period of time to obtain a court order protecting such records as confidential commercial information; this would apply to any trade secrets or confidential, commercial, or financial information provided by BellSouth pursuant to its contract with the county. 1998 Miss. Op. Att'y Gen. 242.

A county tax assessor and collector should follow the procedure set out in the statute before releasing information collected about a real estate sales transaction with regard to an individual who notified the tax assessor and collector that he considered such information to be confidential. 2001 Miss. Op. Att'y Gen. 111.

Each circuit clerk is responsible for making available public records of his office when properly requested. Information such as social security numbers, telephone numbers, dates of birth and age information must be erased or removed from such records before they are made available to the public. There is no specific statutory direction on the manner in which such information is to be removed. 2003 Miss. Op. Att'y Gen. 555.

The intent of Section 25-61-9 is to provide notice to third parties that a public records request has been made of sensitive and confidential records and to provide the third parties with the opportunity to seek a court order protecting such records from public review. 2005 Miss. Op. Att'y Gen. 262.

§ 25-61-10. Access to records stored, manipulated or retrieved by sensitive software; acquisition, modification, etc., of systems, etc., used for creation or maintenance of public records data bases.

(1) Any public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software must not thereby diminish the right of the public to inspect and copy a public record. A public body that uses sensitive software, as defined in Section 25-61-9, or proprietary software to store, manipulate, or retrieve a public record will not be deemed to have diminished the right of the public if it either: (a) if legally obtainable, makes a copy of the software available to the public for application to the public records stored, manipulated, or retrieved by the software; or (b) ensures that the software has the capacity to create an electronic copy of each public record stored, manipulated, or retrieved by the software in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(2) A public body shall provide a copy of the record in the format requested if the public body maintains the record in that format, and the public body may charge a fee which must be in accordance with Section 25-61-7.

(3) Before a public body acquires or makes a major modification to any information technology system, equipment, or software used to store, retrieve, or manipulate a public record, the public body shall adequately plan for the provision of public access and redaction of exempt or confidential information by the proposed system, equipment or software.

(4) A public body may not enter into a contract for the creation or maintenance of a public records data base if that contract impairs the ability of the public to inspect or copy the public records of that agency, including

public records that are on-line or stored in an information technology system used by the public body.

HISTORY:
Laws, 1996, ch. 453, § 4, eff from and after July 1, 1996.

Editor's Notes —
At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in (1)(a) was corrected by substituting "(a) if legally obtainable…" for "(a) If [if] legally obtainable…"

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It was proper for the Workers' Compensation Commission to charge $75.00 per hour for six of the hours of labor required to construct and test a search program to retrieve certain data from its database in response to a request for such data. 2000 Miss. Op. Att'y Gen. 285.

Although the software itself is not a public record, in order to provide access to the public records, under subdivision (1)(a) of this section, a public body may choose to make the software available to the public, but is not required to do so. 2004 Miss. Op. Att'y Gen. 193.

§ 25-61-11. Records exempted or privileged by law.

The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional law, state or federal statutory law, or decision of a court of this state or the United States which at the time this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.

HISTORY:
Laws, 1983, ch. 424, § 6; Laws, 2015, ch. 484, § 4, eff from and after Jan. 1, 2016.

Joint Legislative Committee Note —
Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by deleting the word "of" following "United States which at the time." The Joint Committee ratified the correction at its August 14, 2018, meeting.

Editor's Notes —
"The time this chapter is effective", referred to in this section, is July 1, 1983, as provided by Laws of 1983, ch. 424, § 23.

Cross References —
Exemption of certain judicial records from chapter, see § 9-1-38.

Exemption of certain jury records from chapter, see § 13-5-97.

Exemption of certain personnel records from chapter, see § 25-1-100.

Exemption of certain attorneys' work products from chapter, see § 25-1-102.

Exemption of confidential information furnished by third parties, see § 25-61-9.

Exemption of certain individual tax records from chapter, see § 27-3-77.

Exemptions of certain appraisal records from chapter, see § 31-1-27.

Exemption of certain academic records from chapter, see § 37-11-51.

Exemption of certain archaeological records from chapter, see § 39-7-41.

Exemption of certain hospital records from chapter, see § 41-9-68.

Exemption of information used for the Birth Defects Registry, see § 41-21-205.

Exemption of reports of Hepatitis B or HIV carrier status of health care providers from Public Records Law, see § 41-32-7.

Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.

Records and reports compiled in accordance with the Mississippi Medical Examiner Act of 1986, see § 41-61-63.

Confidentiality of certain information involving ambulatory surgical facilities, see § 41-75-19.

Exemption from chapter of records relating to applications for licenses to carry concealed pistols or revolvers, see § 45-9-101.

Exemption of environmental self-evaluation reports, see § 49-2-71.

Restrictions on examination of workers' compensation records, see § 71-3-66.

Exemption of certain licensure application and examination records from chapter, see § 73-52-1.

Exemption from chapter of public records provisions relating to the registration information of charitable organizations, see § 79-11-527.

Exemption of certain commercial and financial records from chapter, see § 79-23-1.

JUDICIAL DECISIONS

ANALYSIS

1. Construction.
2. Settlement agreements.
3. Trade secrets and/or confidential information.
4. Protective order.

1. Construction.

Structure and wording of the Mississippi Public Records Act of 1983 as a whole indicates that the right the Legislature intended to create was the right of the public to the disclosure of public records; based on the language of the Public Records Act, the Legislature intended the right affected by the 2015 amendments discussed above to be the right of the public to have access to materials that belong to the public. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

Rights and remedies at issue were created solely by the Mississippi Public Records Act of 1983; thus, absent an applicable saving clause, a final judgment, or a loss to the telecommunications company of a vested right, the supreme court had to apply the Public Records Act to a corporation's petition to revoke a protective order of a proposal and contract between the Department of Information Technology Services and the telecommunications company as though it had always read as it read today. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

Statutes within an act should be construed to "harmonize with" one another, and interpreting the statute in a manner that prevents the plain language of other parts of the Mississippi Public Records Act of 1983 from correcting contradictory or even erroneous orders certainly fails to do so. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

2. Settlement agreements.

Trial court erred by denying an automobile manufacturer's motion to preserve the confidentiality of its settlement agreement in a wrongful death action, as the agreement was between private parties, did not involve issues of public concern, and was unnecessary to resolve disputes over the fees claimed by various plaintiffs' attorneys. In re Estate of Cole, 163 So. 3d 921, 2012 Miss. LEXIS 600 (Miss. 2012).

3. Trade secrets and/or confidential information.

Trial court erred by denying an automobile manufacturer's motion to preserve the confidentiality of its settlement agreement in a wrongful death action, as the agreement was between private parties, did not involve issues of public concern, and was unnecessary to resolve disputes over the fees claimed by various plaintiffs' attorneys. In re Estate of Cole, 163 So. 3d 921, 2012 Miss. LEXIS 600 (Miss. 2012).

Animal rights organization failed to rebut the evidence presented by the university and the company that the data and information requested in the subject records constituted trade secrets and/or confidential commercial and financial information of a proprietary nature developed by the university under contract with the company; therefore, the data and information requested by the organization was exempted from the provisions of the Mississippi Public Records Act, in harmony with applicable federal law, Miss. Code Ann. §§ 25-61-9 through 25-61-13, 79-23-1(3), and 7 U.S.C.S. § 2143(a)(6)(B). Miss. State Univ. v. People for the Ethical Treatment of Animals, Inc., 992 So. 2d 595, 2008 Miss. LEXIS 355 (Miss. 2008).

4. Protective order.

Chancery court erred in denying a corporation's petition to revoke a protective order of a proposal and contract between the Mississippi Department of Information Technology Services and a telecommunications company because the materials the corporation sought did not belong to the telecommunications company or to the Department but to the public. Cellular S., Inc. v. BellSouth Telecomms., LLC, 214 So. 3d 208, 2017 Miss. LEXIS 73 (Miss. 2017).

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Accident reports; some investigative offense reports and other documents including witness statements, police radio logs, taped communications or officer's daily reports; and personnel records and applications for employment are exempted from Public Records Act. 1992 Miss. Op. Att'y Gen. 793.

Medical information contained in "run reports" from City EMS units which contain name of person treated, address of response, physical data, summary of any medical treatment or other action taken in response to run and other pertinent information, is confidential other information in reports is public. 1993 Miss. Op. Att'y Gen. 592.

The Department of Public Safety may implement the federal "Driver's Protection Act of 1994" by enacting regulations, if necessary, under the Mississippi Administrative Procedures Act (Miss. Code Section 25-43-1.101 et seq.) to effectuate federal exemptions to the Mississippi Public Records Act pursuant to Miss. Code Section 25-61-11, and if it so desires, may adopt regulations pertaining to an "opt-out" system. 1997 Miss. Op. Att'y Gen. 515.

RESEARCH REFERENCES

ALR.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 A.L.R.4th 333.

Parts and supplies used in repair as subject to sales and use taxes. 113 A.L.R.5th 313.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act 5 (U.S.C.S. 552(b)). 168 A.L.R. Fed. 143.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C.S. § 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy." 169 A.L.R. Fed. 495.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.S. § 552(b)). 171 A.L.R. Fed. 193.

Construction and application of FOIA exemption 7(f), 5 U.S.C.S. § 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety. 184 A.L.R. Fed. 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.S. § 552). 187 A.L.R. Fed. 1.

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.S. § 552(b)(7)(a)) exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings." 189 A.L.R. Fed. 1.

§ 25-61-11.1. Exemption for private information of persons possessing a weapon permit.

The name, home address, any telephone number or other private information of any person who possesses a weapon permit issued under Section 45-9-101 or Section 97-37-7 shall be exempt from the Mississippi Public Records Act of 1983.

HISTORY:

Laws, 2013, ch. 307, § 1, eff from and after passage (approved Mar. 4, 2013.).

§ 25-61-12. Exemption for private information of law enforcement, judicial and prosecutorial personnel; exceptions.

(1) The home address, any telephone number of a privately paid account or other private information of any law enforcement officer, criminal investigator, judge or district attorney or the spouse or child of the law enforcement officer, criminal investigator, judge or district attorney shall be exempt from the Mississippi Public Records Act of 1983. This exemption does not apply to

any court transcript or recording if given under oath and not otherwise excluded by law.

(2)(a) When in the possession of a law enforcement agency, investigative reports shall be exempt from the provisions of this chapter; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.

(b) Nothing in this chapter shall be construed to prevent any and all public bodies from having among themselves a free flow of information for the purpose of achieving a coordinated and effective detection and investigation of unlawful activity. Where the confidentiality of records covered by this section is being determined in a private hearing before a judge under Section 25-61-13, the public body may redact or separate from the records the identity of confidential informants or the identity of the person or persons under investigation or other information other than the nature of the incident, time, date and location.

(c) Nothing in this chapter shall be construed to exempt from public disclosure a law enforcement incident report. An incident report shall be a public record. A law enforcement agency may release information in addition to the information contained in the incident report.

(d) Nothing in this chapter shall be construed to require the disclosure of information that would reveal the identity of the victim.

(3) Personal information of victims, including victim impact statements and letters of support on behalf of victims that are contained in records on file with the Mississippi Department of Corrections and State Parole Board, shall be exempt from the provisions of this chapter.

(4) Records of a public hospital board relating to the purchase or sale of medical or other practices or other business operations, and the recruitment of physicians and other health care professionals, shall be exempt from the provisions of this chapter.

HISTORY:

Laws, 2006, ch. 440, § 1; Laws, 2008, ch. 392, § 3; Laws, 2015, ch. 484, § 5, eff from and after Jan. 1, 2016.

JUDICIAL DECISIONS

1. Investigative reports.

Court of appeals erred in holding that the public records a publishing company sought were exempt under the investigative-report exemption in the Mississippi Public Records Act because the company waived its claim that the exemption applied; no defense was asserted in the Department of Audit's answer that the requested records were subject to grand-jury secrecy laws, and a "protective order" drafted by the special assistant attorneys general only partly modified the grand-jury subpoenas. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Chancery court erred in finding that the Department of Marine Resources (DMR) violated the Mississippi Public Records Act of 1983 when it denied a newspaper publisher's requests and when it found the investigative-report exemption did not apply because the records the publisher sought were investigative reports; a State grand-jury subpoena prohibited the release of the DMR records to anyone except for the State Auditor, who became the custodian of DMR's records. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

§ 25-61-13. Mississippi Ethics Commission to enforce chapter; procedure upon complaint by any person denied right to inspect public records; petition to chancery court to enforce or appeal order.

The Mississippi Ethics Commission shall have the authority to enforce the provisions of this chapter upon a complaint filed by any person denied the right granted under Section 25-61-5 to inspect or copy public records. Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved. The public body shall have fourteen (14) days from receipt of the complaint to file a response with the commission. After receiving the response to the complaint or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing in accordance with rules and regulations promulgated by the Ethics Commission. The Ethics Commission may order the public body and any individual employees or officials of the public body to produce records or take other reasonable measures necessary, if any, to comply with this chapter. The Ethics Commission may also impose penalties as authorized in this chapter. The Ethics Commission may order a public body to produce records for private review by the commission, its staff or designee. The Ethics Commission shall complete its private review of the records within thirty (30) days after receipt of the records from the public body. Records produced to the commission for private review shall remain exempt from disclosure under this chapter while in the custody of the commission.

Nothing in this chapter shall be construed to prohibit the Ethics Commission from mediating or otherwise resolving disputes arising under this chapter, from issuing an order based on a complaint and response where no facts are in dispute, or from entering orders agreed to by the parties. In carrying out its responsibilities under this section, the Ethics Commission shall have all the powers and authority granted to it in Title 25, Chapter 4, Mississippi Code of 1972, including the authority to promulgate rules and regulations in furtherance of this chapter.

Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission issued pursuant to this chapter. In any such appeal the chancery court shall conduct a de novo review. Nothing in this chapter shall be construed to prohibit any party from filing a complaint in any chancery court having jurisdiction, nor shall a party be obligated to exhaust administrative remedies before filing a complaint. However, any party filing such a complaint in chancery court shall serve written notice upon the Ethics Commission at the time of filing the complaint. The written notice is for information only and does not make the Ethics Commission a party to the case.

HISTORY:

Laws, 1983, ch. 424, § 7; Laws, 2008, ch. 562, § 18; Laws, 2014, ch. 482, § 1, eff from and after July 1, 2014.

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 18.

Cross References —

Mississippi Burn Care Fund, see § 7-9-70.

Exemption of certain judicial records from chapter, see § 9-1-38.

Authority of chancellor to try causes in vacation, see § 9-5-1.

Exemption of certain jury records from chapter, see § 13-5-97.

Exemption of certain personnel records from chapter, see § 25-1-100.

Exemption of certain attorneys' work products from chapter, see § 25-1-102.

Exemption of certain confidential information furnished by third parties, see § 25-61-9.

Exemption from chapter otherwise imposed by law, see § 25-61-11.

Penalty for wrongful denial of access to records, see § 25-61-15.

Exemption of certain individual tax records from chapter, see § 27-3-77.

Exemption of certain appraisal records from chapter, see § 31-1-27.

Exemption of certain academic records from chapter, see § 37-11-51.

Exemption of certain hospital records from chapter, see § 41-9-68.

Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.

State Highway Fund, see § 65-11-35.

Restrictions on examination of workers' compensation records, see § 71-3-66.

Exemption of certain licensure application and examination records from chapter, see § 73-52-1.

Exemption of certain commercial and financial records from chapter, see § 79-23-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Illustrative cases.

1. In general.

Court of appeals did not except prisoners from the Public Records Act because it never stated or suggested that prisoners were outside the scope of the Act, and if an inmate so desired he could, pursuant to the statute, institute a suit in the chancery court; nothing in the court of appeals decision or in the order of the circuit court prevented his doing so, and the supreme court's ruling did not impede the inmate's statutory right to file such an action. Pryer v. State, 139 So. 3d 713, 2014 Miss. LEXIS 272 (Miss. 2014).

Animal rights organization failed to rebut the evidence presented by the university and the company that the data and information requested in the subject records constituted trade secrets and/or confidential commercial and financial information of a proprietary nature developed by the university under contract with the company; therefore, the data and information requested by the organization was exempted from the provisions of the Mississippi Public Records Act, in harmony with applicable federal law, Miss. Code Ann. §§ 25-61-9 through 25-61-13, 79-23-1(3), and 7 U.S.C.S. § 2143(a)(6)(B). Miss. State Univ. v. People for the Ethical Treatment of Animals, Inc., 992 So. 2d 595, 2008 Miss. LEXIS 355 (Miss. 2008).

Chancellor did not err in dismissing a requester's suit against a circuit clerk under Miss. Code Ann. § 25-61-13 to compel access to public records because the clerk had filed a notice of service showing that he had sent the requested documents and thus there was no further legitimate controversy between the parties. Scruggs v. Caldwell, 970 So. 2d 1298, 2007 Miss. App. LEXIS 735 (Miss. Ct. App.), cert. dismissed, 973 So. 2d 245, 2007 Miss. LEXIS 702 (Miss. 2007).

Venue was not proper in Forrest County while action in Hinds County was pending and abeyance agreed to, where statute provided that one aggrieved by denial of access to public records could institute suit in Chancery Court of County in which public body was located; contention that Board of Trustees of state institutions of higher learning could be sued in any county where it did business was rejected, where to do so would require Board to defend actions in all 82 counties; Chancery Court has no jurisdiction over defendant who neither resides nor is found in county where suit is filed, absent waiver. Board of Trustees v. Slyke, 510 So. 2d 490, 1987 Miss. LEXIS 2982 (Miss. 1987).

2. Illustrative cases.

Chancery court properly dismissed defendant's complaint discovery because it was subsumed by the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 through 99-39-29) and was outside the chancery court's equity jurisdiction, defendant was obligated to obtain leave from the state supreme court before filing a postconviction relief motion since his convictions had been affirmed on direct appeal, and defendant's complaint could not be construed as a pleading where the court reporter did not fall under the definition of a "public body," and any tapes used to prepare an official transcript were not "public records." Copple v. State, 196 So. 3d 189, 2016 Miss. App. LEXIS 428 (Miss. Ct. App. 2016).

RESEARCH REFERENCES

ALR.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public. 40 A.L.R.4th 333.

Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under state freedom of information acts. 114 A.L.R.5th 283.

Construction and application of state freedom of information act provisions concerning award of attorney's fees and other litigation costs. 118 A.L.R.5th 1.

Allowance of punitive damages in state freedom of information actions. 13 A.L.R.6th 721.

Public access to records and proceedings of civil actions in Federal District Courts. 96 A.L.R. Fed. 769.

Law Reviews.

Abbott, Venue of transitory actions against resident individual citizens in Mississippi-Statutory revision could remove needless complexity. 58 Miss. L. J. 1, Spring, 1988.

§ 25-61-15. Penalty for wrongful denial of access to record.

Any person who shall deny to any person access to any public record which is not exempt from the provisions of this chapter or who charges an unreasonable fee for providing a public record may be liable civilly in his personal capacity in a sum not to exceed One Hundred Dollars ($100.00) per violation, plus all reasonable expenses incurred by such person bringing the proceeding.

HISTORY:

Laws, 1983, ch. 424, § 8; Laws, 2008, ch. 562, § 19; Laws, 2011, ch. 310, § 2; Laws, 2014, ch. 416, § 2, eff from and after July 1, 2014.

Editor's Notes —

On August 5, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2008, ch. 562, § 19.

Cross References —

Exemption of certain judicial records from chapter, see § 9-1-38.

Exemption of certain jury records from chapter, see § 13-5-97.

Exemption of certain personnel records from chapter, see § 25-1-100.

Exemption of certain attorneys' work products from chapter, see § 25-1-102.

Exemption of certain confidential information furnished by third parties, see § 25-61-9.

Exemption from chapter otherwise imposed by law, see § 25-61-11.

Exemption of certain individual tax records from chapter, see § 27-3-77.

Exemption of certain appraisal records from chapter, see § 31-1-27.

Exemption of certain academic records from chapter, see § 37-11-51.

Exemption of certain archaeological records from chapter, see § 39-7-41.

Exemption of certain hospital records from chapter, see § 41-9-68.

Certain persons not entitled to access to records of bureau of vital statistics, see § 41-57-2.

Restrictions on examination of workers' compensation records, see § 71-3-66.

Exemption of certain licensure application and examination records from chapter, see § 73-52-1.

Exemption of certain commercial and financial records from chapter, see § 79-23-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Attorney fees.
3. Illustrative cases.

1. In general.

Language of the statute contains no indication that, by its enactment, the Mississippi Legislature intended to abrogate judicial immunity; because there is no textual indication whatsoever that the legislature intended to abrogate judicial immunity, the supreme court declines to read the "any person" language as a limitation on judicial immunity. Pryer v. Gardner, — So. 3d —, 2018 Miss. LEXIS 217 (Miss. May 17, 2018).

Where the Harrison County Development Commission (HCDC), a political subdivision of the State of Mississippi, willfully and knowingly denied a county citizen access to certain records related to a planned development (in part, by unilaterally requiring fees that were not part of its policy), and which were not exempt under the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1 to Miss. Code Ann.§ 25-61-17, it was properly ordered to produce those records not specifically exempt, and pay a civil penalty, as well as attorney's fees. Pursuant to Miss. Code Ann. § 25-61-9(2), HCDC should have separated information on its director's salary and leave time (subject to disclosure), from his personnel file and disclosed any non exempt material; further, the information on its business partners or prospects were not confidential and were subject to disclosure, and therefore, it was not entitled to a protective order per Miss. R. Civ. P. 26(d). Harrison County Dev. Comm'n v. Kinney, 920 So. 2d 497, 2006 Miss. App. LEXIS 51 (Miss. Ct. App. 2006).

The Department of Wildlife did not willfully and knowingly deny access to non-exempt public information, nor did it engage in actions or conduct which rose to the level of bad faith, and, therefore, the assessment of a civil penalty was not warranted where there was no direct Mississippi authority to guide it to release the requested records. Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n, 1999 Miss. LEXIS 67 (Miss. Feb. 4, 1999), opinion withdrawn by, substituted opinion at 740 So. 2d 925, 1999 Miss. LEXIS 255, 140 Lab. Cas. (CCH) P58844 (Miss. 1999).

2. Attorney fees.

The statute authorizes an award of attorneys fees as expenses incurred by such person bringing the lawsuit. Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n, 740 So. 2d 925, 1999 Miss. LEXIS 255 (Miss. 1999).

3. Illustrative cases.

Chancery court properly dismissed for failure to state a claim a prisoner's complaint alleging that a judge violated the Mississippi Public Records Act because the claim was barred by the doctrine of judicial immunity; the supreme court had held that the judge had jurisdiction to rule upon the prisoner's filings, and thus, judicial immunity insulated him from the prisoner's civil action. Pryer v. Gardner, — So. 3d —, 2018 Miss. LEXIS 217 (Miss. May 17, 2018).

Department of Audit was liable for expenses and attorney's fees in the amounts found and calculated by the chancery court under the Mississippi Public Records Act (MPRA) because when the chancery court ultimately decided that the documents a publishing company requested were not exempt under the MPRA, the Department continued to frustrate the company's records request; the Department delayed and expanded the litigation with a series of actions that defeated the records request. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Chancery court erred in finding that the Department of Marine Research (DMR) violated the Mississippi Public Records Act because DMR acted in good faith to resolve a publishing company's public-records request; accordingly, DMR was not joint and severally liable for attorney's fees, costs, and expenses. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Chancery court did not err in fining the Director of Investigations because he knowingly denied a publishing company access to public documents. Miss. Dep't of Audit v. Gulf Publ. Co., 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Fines were void because the chancery court violated individuals' due process rights by failing to provide individuals with notice of the alleged Mississippi Public Records Act of 1983 violations and charges to be adjudicated against them; none of the individuals were named in either lawsuit in their individual capacity or given notice that they could potentially be fined. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452, 2016 Miss. App. LEXIS 170 (Miss. Ct. App. 2016), rev'd, in part, vacated, 236 So. 3d 32, 2017 Miss. LEXIS 437 (Miss. 2017).

Appellate court found no error in the chancellor's finding of no willful violation of the Public Records Act, Miss. Code Ann. § 25-61-5 and Miss. Code Ann. § 25-61-15 regarding the acts of the planning commission because the element of "willfulness" only pertained to assessment of possible civil penalties, not the actual violation. No exception to a Public Records Act violation could occur, since there was no "willfulness" element regarding the violation itself. LaCroix v. Marshall County Bd. of Supervisors, 28 So. 3d 650, 2009 Miss. App. LEXIS 537 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 90 (Miss. 2010).

The chancellor properly assessed a $100.00 civil penalty and the petitioner's expenses against the respondent department based on a finding that the department willfully and knowingly denied the petitioner's public records request, notwithstanding the assertion by the department that it was legitimately concerned about the implications of the request on the privacy rights of the department's employees and that it should not be penalized because there was no authority addressing the issue presented by the request; there was a great deal of authority from other jurisdictions which should have guided the department to the same conclusion reached by the chancery court, and the department acted against the opinions of the Mississippi Attorney General. Mississippi Dep't of Wildlife, Fisheries & Parks v. Mississippi Wildlife Enforcement Officers' Ass'n, 740 So. 2d 925, 1999 Miss. LEXIS 255 (Miss. 1999).

RESEARCH REFERENCES

ALR.

Allowance of punitive damages in state freedom of information actions. 13 A.L.R.6th 721.

§ 25-61-17. Chapter not to affect legislature's regulation of own proceedings and records access.

Nothing in this chapter shall be construed as denying the Legislature the right to determine the rules of its own proceedings and to regulate public access to its records. However, notwithstanding the provisions of this section, the Legislature shall be subject to the provisions of Sections 27-104-151 through 27-104-159.

HISTORY:

Laws, 1983, ch. 424, § 9; Laws, 2011, ch. 489, § 8, eff from and after July 1, 2011.

JUDICIAL DECISIONS

Cited in Harrison County Dev. Comm'n v. Kinney, 920 So. 2d 497, 2006 Miss. App. LEXIS 51 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

ALR.

State freedom of information act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

§ 25-61-19. State agencies and departments required to post to websites legislative updates on legislation revising agency or department powers and duties.

Within sixty (60) days after the end of each regular session of the Legislature, each agency or department of the State of Mississippi shall include on the Internet website of the agency or department a separate section that provides a legislative update on any legislation enacted at the legislative session that revises the powers and duties of the agency or department. The agency or department shall include a link to the legislative update section on the home page of the website. The legislative update section shall contain a summary of the revisions made to the powers and duties of the agency or department by the legislation, and a contact section or link so that members of the public may comment on or ask questions about the revisions or the effect of the revisions in the legislation. The legislative update section shall remain on the website of the agency or department until January 1st of the following year.

HISTORY:
Laws, 2013, ch. 453, § 1, eff from and after July 1, 2013.

CHAPTER 63.

DIGITAL SIGNATURE ACT [REPEALED]

Sec.
25-63-1 through 25-63-11. Repealed.

§§ 25-63-1 through 25-63-11. Repealed.

Repealed by Laws, 2001, ch. 400, § 21, eff from and after July 1, 2001.
§ 25-63-1. [Laws, 1997, ch. 329, § 1, eff from and after July 1, 1998.]
§ 25-63-3. [Laws, 1997, ch. 329, § 2, eff from and after July 1, 1998.]
§ 25-63-5. [Laws, 1997, ch. 329, § 3, eff from and after July 1, 1998.]
§ 25-63-7. [Laws, 1997, ch. 329, § 4, eff from and after July 1, 1998.]
§ 25-63-9. [Laws, 1997, ch. 329, § 5, eff from and after July 1, 1998.]
§ 25-63-11. [Laws, 1997, ch. 329, § 6, eff from and after July 1, 1998.]

Editor's Notes —

Former § 25-63-1 was entitled "Short Title."

Former § 25-63-3 was entitled "Legislative findings and declarations."

Former § 25-63-5 was entitled "Definitions."

Former § 25-63-7 was entitled "Certification of digital signatures."

Former § 25-63-9 was entitled "Force and effect of digital signature."

Former § 25-63-11 was entitled "Records exempt from Public Records Act."

CHAPTER 65.

AGENCY, UNIVERSITY AND COMMUNITY/JUNIOR COLLEGE INTERNAL AUDITING PROGRAM

Sec.	
25-65-1.	Short title.
25-65-3.	Purpose and application.
25-65-5.	Definitions.
25-65-7.	Specific universities, colleges and agencies included.
25-65-9.	Internal audit of directors and staff.
25-65-11.	Qualifications of internal audit directors.
25-65-13.	Duties of internal audit directors.
25-65-15.	Auditing standards.
25-65-17.	Audit reports confidential; production of reports; access to records.
25-65-19.	Submission of report; follow-up and final report.
25-65-21.	Corrective actions taken on findings.
25-65-23.	Roles of state or external auditors and legislative committees.
25-65-25.	Professional development of internal audit staff; cooperation regarding technical assistance.
25-65-27.	Review and approval of audits.
25-65-29.	State Interagency Internal Audit Forum.
25-65-31.	Annual report of internal audit directors.
25-65-33.	Investigation of criminal activity.

§ 25-65-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Internal Audit Act."

HISTORY:

Laws, 2003, ch. 437, § 1, eff from and after July 1, 2003.

Editor's Notes —

Laws of 2003, ch. 437, § 18 provides as follows:

"SECTION 18. This act shall take effect and be in force from and after July 1, 2003, and the universities, community/junior colleges and agencies identified in this act shall comply with the provisions of this act not later than July 1, 2005, if specific funds are appropriated to implement this act."

§ 25-65-3. Purpose and application.

The purpose of this chapter is to establish a full-time program of internal auditing to assist in improving university, community/junior college and agency operations, to verify the existence of assets and to identify opportunities for cost savings and revenue enhancement. The university, community/junior college or agency internal audit director shall furnish independent analyses, appraisals and recommendations concerning the adequacy of each university, community/junior college and state agency's systems of internal control, and the efficiency and effectiveness of university, community/junior college and agency management in carrying out assigned responsibilities in accordance with applicable laws, rules and regulations. The internal auditing program shall evaluate and advise the organization in the establishment of controls necessary to accomplish university, community/junior college and agency goals and objectives at reasonable costs. The university, community/

junior college or agency internal audit director shall be alert to the possibility of abuse or illegal acts, errors and omissions, and conflict of interest.

HISTORY:
Laws, 2003, ch. 437, § 2, eff from and after July 1, 2003.

§ 25-65-5. Definitions.

The following words and phrases shall have the meanings ascribed herein, unless the context clearly indicates otherwise:

(a) "University" means and includes Alcorn State University, Delta State University, Jackson State University, Mississippi State University, Mississippi State University Agriculture and Forestry Experiment Station, Mississippi University Cooperative Extension Service, Mississippi State University Forest and Wildlife Research Center, Mississippi State University State Chemical Laboratory, Mississippi University for Women, Mississippi Valley State University, The University of Mississippi, University of Mississippi Medical Center and the University of Southern Mississippi.

(b) "Community/Junior college" means and includes Coahoma Community College, Copiah-Lincoln Community College, East Central Community College, East Mississippi Community College, Hinds Community College, Holmes Community College, Itawamba Community College, Jones County Junior College, Meridian Community College, Mississippi Delta Community College, Mississippi Gulf Coast Community College, Northeast Mississippi Community College, Northwest Mississippi Community College, Pearl River Community College and Southwest Mississippi Community College.

(c) "State agency" means and includes the Department of Finance and Administration, the State Tax Commission, the Department of Education, the State Department of Health, the Department of Mental Health, the Department of Agriculture and Commerce, the Mississippi Development Authority, the Department of Environmental Quality, the Department of Wildlife, Fisheries and Parks, the Department of Corrections, the Division of Medicaid, the Department of Rehabilitation Services, the Department of Public Safety, the Mississippi Employment Security Commission, the Mississippi Department of Information Technology Services, the Public Employees Retirement System, the Mississippi Department of Transportation, the Mississippi Gaming Commission and the Mississippi Department of Human Services.

(d) "Agency head" means an elected official who heads an agency, an executive director or a governing board or commission responsible for heading an agency or a president or chancellor of a university or a president of a community/junior college.

(e) "Agency internal audit director" means the person appointed by the agency head to direct the internal audit function for the state agency. Where consistent with responsibilities described in this chapter, the term agency internal audit director may also be referred to as inspector general, audit director, chief auditor or similar internal audit administrator descriptions.

(f) "Audit committee" means a standing committee external to organization management that collectively has the expertise to provide effective guidance regarding the acquisition and provision of internal audit services and to provide guidance in the provision of those services.

HISTORY:

Laws, 2003, ch. 437, § 3, eff from and after July 1, 2003.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 25-65-7. Specific universities, colleges and agencies included.

The provisions of this chapter shall only apply (a) to the following universities: (i) Alcorn State University, (ii) Delta State University, (iii) Jackson State University, (iv) Mississippi State University, (v) Mississippi State University Agriculture and Forestry Experiment Station, (vi) Mississippi State University Cooperative Extension Service, (vii) Mississippi State University Forest and Wildlife Research Center, (viii) Mississippi State University State Chemical Laboratory, (ix) Mississippi University for Women, (x) Mississippi Valley State University, (xi) The University of Mississippi, (xii) University of Mississippi Medical Center and the (xiii) University of Southern Mississippi; (b) to the following community/junior colleges: (i) Coahoma Community College, (ii) Copiah-Lincoln Community College, (iii) East Central Community College, (iv) East Mississippi Community College, (v) Hinds Community College, (vi) Holmes Community College, (vii) Itawamba Community College, (viii) Jones County Junior College, (ix) Meridian Community College, (x) Mississippi Delta Community College, (xi) Mississippi Gulf Coast Community College, (xii) Northeast Mississippi Community College, (xiii) Northwest Mississippi Community College, (xiv) Pearl River Community College and (xv) Southwest Mississippi Community College; and (c) to the following agencies: (i) the Department of Finance and Administration, (ii) the State Tax Commission, (iii) the Department of Education, (iv) the State Department of Health, (v) the Department of Mental Health, (vi) the Department of Agriculture and Commerce, (vii) the Mississippi Development Authority, (viii) the Department of Environmental Quality, (ix) the Department of Wildlife, Fisheries and Parks, (x) the Department of Corrections, (xi) the Division of Medicaid, (xii) the Department of Rehabilitation Services, (xiii) the Department of Public Safety, (xiv) the Mississippi Employment Security Commission, (xv) the Mississippi Department of Information Technology Services, (xvi) the Public Employees Retirement System, (xvii) the Mississippi Department of Transportation, (xviii) the Mississippi Gaming Commission and (xix) the Mississippi Department of Human Services.

HISTORY:

Laws, 2003, ch. 437, § 4, eff from and after July 1, 2003.

Editor's Notes —

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax

Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 25-65-9. Internal audit of directors and staff.

(1) Except as otherwise provided by subsection (2) of this section, each university, community/junior college and state agency shall, subject to specific appropriation of available funding, employ an agency internal audit director who shall be appointed by the university president or chancellor, the community/junior college president, elected official or executive director or his counterpart of a state agency without a governing board or commission. The university president or chancellor, the community/junior college president of the agency head shall ensure that the university, community/junior college or agency shall employ, subject to specific funding being appropriated, a sufficient number of professional and support staff to implement an effective program of internal auditing. Compensation, training, job tenure and advancement of internal auditing staff shall be based upon the rules of the State Personnel Board for other business employees in the system. The internal audit organization shall have organizational status outside the agency's staff or line management functions or units subject to audit, and shall be free of operational and management responsibilities that would impair the ability to make independent audits of any aspects of the agency's operations. An agency, university or community/junior college internal audit director may be terminated by the appointing authority in accordance with State Personnel Board rules and regulations for any state employee after a seven (7) day notification period to the State Auditor.

(2) The university president or chancellor, the community/junior college president or agency head of a university, community/junior college or state agency, respectively, may outsource the internal audit function if he determines that it is more cost efficient than establishing the audit personnel and procedures provided in subsection (1) of this section. Internal audit services may not be outsourced to the same firm or individual who performs independent audit or other consulting services to the university, community/junior college or agency.

HISTORY:

Laws, 2003, ch. 437, § 5, eff from and after July 1, 2003.

§ 25-65-11. Qualifications of internal audit directors.

The university, community/junior college or agency internal audit director shall possess the following qualifications:

(a) A bachelor's degree from an accredited college or university and five (5) years of progressively responsible professional auditing experience as an internal auditor or independent postauditor, electronic data processing auditor or any combination thereof. The auditing experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or

(b) A master's degree from an accredited college or university and three (3) years of progressively responsible professional auditing experience as an internal auditor or independent postauditor, electronic data processing auditor or any combination therefor; or

(c) A certificate as a certified internal auditor issued by The Institute of Internal Auditors and three (3) years of progressively responsible professional auditing experience as an internal auditor or independent postauditor, electronic data processing auditor or any combination thereof; or

(d) A certificate as a Certified Public Accountant with at least three (3) years experience.

HISTORY:

Laws, 2003, ch. 437, § 6, eff from and after July 1, 2003.

§ 25-65-13. Duties of internal audit directors.

The university, community/junior college or agency internal audit director shall:

(a) Report directly to the university president or chancellor, community/junior college president or agency head or deputy university official, community/junior college official or agency head.

(b) Conduct financial, compliance, electronic data processing and operational and efficiency audits of university, community/junior college or agency programs, activities and functions and prepare audit reports of findings.

(c) Review and evaluate internal controls over university, community/junior college or agency programs, accounting systems, administrative systems, electronic data processing systems and all other major systems necessary to ensure accountability of the university, community/junior college or state agency.

(d) Develop long-term and annual audit plans to be based on the findings of periodic documented risk assessments. The plan shall show the individual audits to be conducted during each year and the related resources to be devoted to each of the respective audits. The audit plan shall ensure that internal controls are reviewed on a periodic basis. The plan shall be submitted to the university, community/junior college or agency head for approval and the audit committee for comment. A copy of the approved plan shall be available upon request to the State Auditor or other appropriate external auditor to assist in planning and coordination of any external financial, compliance, electronic data processing or performance audit.

(e) The scope and assignment of the audits shall be determined by the university, community/junior college or internal audit director; however, the university president or chancellor, community/junior college president or head of the agency may at any time direct the internal audit director to perform an audit of a special program, activity, function or organizational unit.

HISTORY:
Laws, 2003, ch. 437, § 7, eff from and after July 1, 2003.

§ 25-65-15. Auditing standards.

Audits shall be conducted in accordance with the Standards for the Professional Practice of Internal Auditing published by The Institute of Internal Auditors, Inc., and, when required by law, regulation, agreement, contract or policy, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.

HISTORY:
Laws, 2003, ch. 437, § 8, eff from and after July 1, 2003.

§ 25-65-17. Audit reports confidential; production of reports; access to records.

(1) Audit reports shall be confidential but shall be provided on a quarterly basis to the governing board or commission of the university, the community/junior college or the state agency. State agencies without a governing board or commission shall have the quarterly report provided to the Governor and the State Auditor.

(2) When the university, community/junior college or agency internal audit director or a member of his or her staff receives from an individual a complaint or information protected by whistleblower or other legislation, the name or identity of the individual shall not be disclosed without the written consent of the individual, or unless required by law or judicial processes.

(3) The director and the internal audit staff shall have access to all personnel and any records, data and other information of the university, community/junior college or state agency deemed necessary to carry out assigned duties. The university, community/junior college or agency internal audit director shall maintain the confidentiality of any public records that are made confidential by law, and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

HISTORY:
Laws, 2003, ch. 437, § 9, eff from and after July 1, 2003.

§ 25-65-19. Submission of report; follow-up and final report.

(1) At the conclusion of each audit, the internal audit director shall submit preliminary findings and recommendations to the person responsible for supervision of the program, activity, function or organizational unit being audited who shall respond in writing to any findings of the internal audit director within forty-five (45) working days or less at the discretion of the

university president or chancellor, the community/junior college president or state agency director after receipt of the findings. Such response and, if necessary, the agency internal audit director's response may be included in the final audit report.

(2) University, community/junior college or the agency internal audit director shall submit the final report, which shall be available to the State Auditor upon request, to the head of the university, community/junior college or agency and the State Auditor.

HISTORY:
Laws, 2003, ch. 437, § 10, eff from and after July 1, 2003.

§ 25-65-21. Corrective actions taken on findings.

(1) No later than six (6) months or less at the discretion of the university president or chancellor, the community/junior college president or state agency director after a financial, compliance, electronic data processing or performance audit is issued, the agency internal audit director shall inform the university president or chancellor, the community/junior college president or the agency head and audit committee of the status of corrective actions taken by the university, community/junior college or agency manager responsible for supervision of the program activity, function or organizational unit audited.

(2) If a follow-up report is issued, the university, community/junior college or agency internal audit director shall submit the report to the head of the university, community/junior college or agency and the audit committee. The follow-up report shall be provided upon request to any member of the Legislature, the State Auditor, the Attorney General, the Governor or other external auditor.

HISTORY:
Laws, 2003, ch. 437, § 11, eff from and after July 1, 2003.

§ 25-65-23. Roles of state or external auditors and legislative committees.

(1) The state or other external auditor, in connection with planning independent postaudits of the same agency, shall give appropriate consideration to internal audit reports and the resolution of findings therein.

(2) Appropriate legislative committees may inquire into the reasons or justifications for failure of the university, community/junior college or agency to correct the deficiencies reported in internal audits.

HISTORY:
Laws, 2003, ch. 437, § 12, eff from and after July 1, 2003.

§ 25-65-25. Professional development of internal audit staff; cooperation regarding technical assistance.

(1) The university, community/junior college or agency head shall make available to the internal audit director adequate resources specifically appropriated to ensure the professional development and continuing professional education of the internal audit staff.

(2) The internal audit director shall cooperate with the State Auditor or other external auditor in the exchange of technical assistance and access to current information concerning audit techniques, policies and procedures.

HISTORY:
Laws, 2003, ch. 437, § 13, eff from and after July 1, 2003.

§ 25-65-27. Review and approval of audits.

The university president or chancellor, the community/junior college president or the agency director shall:

(a) Review and approve the annual internal audit plan and budget, internal and external audit reports, follow-up reports and quality assurance reviews;

(b) Periodically meet with the agency internal audit director to discuss pertinent matters, including whether there are any restrictions on the scope of audits; and

HISTORY:
Laws, 2003, ch. 437, § 14, eff from and after July 1, 2003.

§ 25-65-29. State Interagency Internal Audit Forum.

A State Interagency Internal Audit Forum may be established and composed of agency internal audit directors. The annual report may include a comparison of the annual audit plan for the year with the actual audit report issued and an explanation for any differences. The purpose of the forum will be to promote the exchange of communication, to identify professional development needs and/or conduct or coordinate training programs, to share audit techniques and approaches, and to address ways to improve agency operations and systems of internal control. The forum will elect officers from its membership and may meet periodically throughout the year.

HISTORY:
Laws, 2003, ch. 437, § 15, eff from and after July 1, 2003.

§ 25-65-31. Annual report of internal audit directors.

Within one hundred twenty (120) days after the end of each fiscal year, the university, community/junior college or agency internal audit director shall issue an annual report which separately lists audit reports issued, and other activities completed or in progress as of the end of the fiscal year. The annual report shall describe accomplishments of the internal audit activities. Copies of the report shall be provided to the governing board or commission and the university president or chancellor, the community/junior college president or the agency head and the audit committee. The annual report shall be provided upon request to the State Auditor or other external auditor.

HISTORY:
Laws, 2003, ch. 437, § 16, eff from and after July 1, 2003.

§ 25-65-33. Investigation of criminal activity.

If, during the course of an audit, an auditor determines that criminal activity may be involved, then investigative records shall be confidential until the audit is complete and shall be provided to the university president or chancellor, the community/junior college president or agency director and shall be forwarded to the Attorney General to determine if a criminal prosecution shall proceed.

HISTORY:
Laws, 2003, ch. 437, § 17, eff from and after July 1, 2003.

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